

(No. 519.)

“LADY ANN,” (S.S.)

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the formal Investigation held at the Assize Court, Moot Hall, Newcastle-upon-Tyne, on the 16th of February 1880, before H. C. ROTHERY, Esquire, Wreck Commissioner, assisted by Captain FORSTER and Captain CASTLE, as Assessors, into the circumstances attending the stranding and loss of the steamship “LADY ANN,” of Sunderland, near North Sea Landing, Flamborough Head, on the 28th of January 1880.

Report of Court.

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

1. That the stranding of the said steamship “Lady Ann,” on a reef of rocks off the entrance to North Sea Bay, near Flamborough Head, was due to her having been steered on a course too far to the westward, and too near to the land.

2. That Arthur Way, the master,—

(1.) Set a proper course from Sunderland, which, if it had been continued, would have taken the vessel well clear of Flamborough Head.

(2.) Did not give instructions that he should be called when they had arrived off Whitby, and that it was not necessary that he should do so.

(3.) Did not authorise the second officer, who holds no certificate, to alter the courses without reporting the same to him.

(4.) Did not, after he was called at noon, go on deck, as he should have done, before sitting down to his dinner, he having been off the deck then for nearly six hours; and that the fact that the vessel’s engines were going only half speed should have been perceived by him, and should have warned him that his personal supervision was required on deck.

3. That John Hammond, the chief ~~officer~~ ^{Officer}—

(1.) Put the vessel on a course too far to the westward for passing Flamborough Head, after taking his departure from Whitby.

(2.) Made no allowance for any set of the tide, and that none such was required to be made.

(3.) Neglected to call the master when the weather came on thick.

(4.) Neglected to keep a man on the look-out forward when it was necessary and proper to do so.

(5.) Neglected to verify his assumed position from the land by a cast of the lead.

The Court accordingly ordered the certificate of the said Arthur Way, the master, to be suspended for three months, and the master’s certificate of the said John Hammond, the chief mate, to be suspended for six months, but recommended that they be allowed chief mate’s certificates during the respective periods of such suspension.

The Court was not asked to make any order as to costs.

Dated the 16th day of February 1880.

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

We concur in the above report.

(Signed) GEORGE H. FORSTER, } Assessors.
 JOHN S. CASTLE, }

Annex to the Report.

This case was heard at Newcastle-on-Tyne on the 16th of February instant, when Mr. De Hamel appeared for the Board of Trade, Mr. Roche for the master, and Mr. Brown for the first mate of the “Lady Ann.” Seven witnesses having been produced by the Board of Trade and examined, Mr. De Hamel stated that the Board of Trade desired the opinion of the Court upon the following questions:—

“1. What was the cause of the stranding of the steamship ‘Lady Ann,’ off Flamborough Head, on the 28th of January last?”

“2. Whether the stranding of the said steamship was caused by the wrongful acts and defaults of Arthur Way, the master, and John Hammond, the chief mate:—

“As regards the master,—

“ (1.) In setting too fine a course on taking his departure from Sunderland, and not making proper allowance for the set of the tide?

“ (2.) In neglecting to leave instructions to be called when the vessel arrived off Whitby?

“ (3.) In allowing his second officer, who holds no certificate, to alter the courses without reporting such alterations to him?

“ (4.) In neglecting to be on deck at a time when, owing to the hazy state of the weather, the nearness of the said steamship to land, and the warning afforded by the stoppage or slowing of the engines, the safety of the vessel required his personal supervision?

“As regards the chief officer,—

“ (1.) In continuing too fine a course for Flamborough Head after taking his departure from Whitby?

“ (2.) In not allowing for the set of the tide?

“ (3.) In neglecting to call the master when the weather came on thick?

“ (4.) In neglecting to keep a man on the look-out forward?

“ (5.) In neglecting to verify his assumed distance from the land by a cast of the lead?”

Mr. De Hamel also stated that “in the opinion of the Board of Trade the certificates of Arthur Way and John Hammond should be dealt with.”

Mr. Roche and Mr. Brown having addressed the Court on behalf of their respective parties, and Mr. De Hamel having been heard in reply, the Court proceeded to give judgment on the questions on which its opinion had been asked. The circumstances of the case are as follow:—

The “Lady Ann” was an iron screw steamship, belonging to the Port of Sunderland, of 891 tons gross and 579 tons net register, and was fitted with engines of 90 horse-power. She was built at Sunderland in the year 1877, and at the time of her loss was the property of the Earl of Durham, Mr. Thomas Jowsey Reay, of No. 7, The Cedars, Sunderland, being the manager.

She left Sunderland at 4 a.m. of the 28th of January last, bound with a cargo of about 1,000 tons of coal to Bordeaux, and having a crew of 17 hands all told. Having got a sufficient offing with the white sector of Souther Point Light in view, the captain put her upon a S.S.E. course, intending, as he told us, to make a straight course from there till they had passed Flamborough Head. He remained on deck attending to the navigation of the vessel until about 6.40 a.m., when daylight beginning to appear he went below, leaving the deck in charge of the boatswain, or second officer, with directions to him to look out for Whitby High Lights, which he said he would make right ahead, and to call him in case of any change of weather. The vessel continued her course, and at about 8 o’clock Whitby Buoy was seen right ahead, or nearly right ahead, upon which the helm of the vessel was starboarded so as to clear it. At about this time the chief officer came on deck and took charge, the vessel at the time being on a S.E. by S. course. So far there is no dispute, but it is on what was subsequently done that the case would seem to turn. According to the first mate he continued a S.E. by S. course until about half-past 9 o’clock, or for an hour to an hour and a half, when he told us she would be off the South Check of Robin Hood’s Bay, and that the course was then altered to S.S.E., and that she was kept on that course until just before noon, when, observing a dark cloud which he took to be land on his starboard beam, he altered the course to S.E. and then went below to have his dinner, leaving the deck in charge of the boatswain, who had at that time come up. It should be observed that from about a quarter to 11, owing to a thick fog having come on, the vessel’s speed had been reduced, the engines having been put at half speed, then dead slow, then stopped for a short time on two occasions, and then put at half speed; and that when the mate went below to his dinner, they were going at half speed, the weather not being quite so thick as it had been although still very hazy. On going into the cabin the mate saw the captain, who had just then been called; some conversation, which we shall presently have to refer to, then passed between them, and he then sat down to dinner, to which he was soon afterwards followed by the master; and in about 10 minutes or a quarter of an hour from the time of the mate having gone below, the vessel suddenly struck. On their immediately rushing on deck it was at once seen that the vessel had struck on a scar or ridge of rocks lying off North Sea Bay, an inlet about 2 miles to the northward of Flamborough Head. The vessel had struck about midships and was hanging as it were upon a pivot. As the tide rose the water filled the engine-room, and in

about a quarter of an hour the engine-room fires were put out. As the water continued to rise it filled the forward hold, and the vessel then fell forward until she touched the ground, which was about 4 fathoms deep forward, her stern being up in the air. Some portion of her stores was subsequently saved, but the vessel herself became a total wreck. No lives were lost.

These being the facts of the case, the first question upon which the opinion of the Court has been asked is, "What was the cause of the stranding of the steamship 'Lady Ann,' off Flamborough Head on the 23rd of January last?" Now, if after getting an offing and coming within the white sector of Souter Point, a S.S.E. course had been steered and made good, it would have taken the vessel clear of Whitby Rock and well outside of Flamborough Head; according to the master such a course would generally take you $1\frac{1}{2}$ to 2 miles from Whitby Rock, and from 6 to 8 miles from Flamborough Head. Inasmuch, however, as his deviation card told him that to make a S.S.E. course it was necessary to steer a little easterly, that would set him a little to the westward; but then he told us that he calculated that the wind, which was blowing strong from W.S.W. when he went below, as well as the ebb tide, would set him off the land, and would about compensate for the deviation of his compass. There is no dispute that until 8 a.m. when they made Whitby Buoy a S.S.E. course was steered; but from there, according to the chief mate, for an hour to an hour and a half, a S.E. by S. course was steered, and then a S.S.E. course again until shortly before noon, when the vessel was put on a S.E. course to take her farther off the land, and it therefore becomes necessary to inquire how, if these courses were really steered, the vessel could have gone ashore near the mouth of North Sea Bay.

And first, is it possible that the tide could have done it? It seems that it was just past high water when they left Sunderland, and when they took the ground it was about an hour past low water at that spot. They would thus have had the ebb tide all the time except for about the last hour. Now the tide, as a rule, runs parallel with the shore, and as the ebb tide sets to the northward, and the flood tide to the southward, the vessel would, in crossing Tees Bay, have had the ebb tide slightly setting her out from the land at the upper end of it, and slightly setting her towards the land at the lower end of it; the one may be said to have counteracted the other. Again, after clearing the South Cheek of Robin Hood's Bay, the ebb tide, or so much of it as would then be running, would at the upper end of the Scarborough Bay have had a tendency to set her off the land, and before she got to the lower part of it the ebb tide would be spent, and the flood tide, or so much of it as might then be making, would also tend to set her off the land. So far therefore as the tide is concerned, there is not the slightest reason to suppose that it could have been the cause of taking the vessel so far out of her course to the westward. Nor could the wind have done it, for we are told that when they left Sunderland it was blowing strong from W.S.W.; and although it afterwards fell we are not told that it ever came round to the eastward. We must therefore dismiss any suggestion that either the wind or the tide could have set her inshore. Nor have we any reason to think that it was owing to any error in her compasses. We were told by the master that they had been adjusted in December 1878, that he had been in the vessel since she was built, had constantly sailed out of Sunderland to the southward, and had always found the compasses correct according to the deviation card; and that on a S.S.E. course there was very little deviation, and that what there was was to the westward, making it necessary to steer a little easterly to make a S.S.E. course magnetic. We have also the fact that by steering a S.S.E. course from off Sunderland they had made Whitby Buoy, as the master said that they would do, nearly right ahead.

It being then impossible to attribute the deviation of the vessel from her course to the wind or tide, or to any error in her compasses, it becomes important to see what evidence we have, apart from that of the chief mate, that the vessel was kept on a S.E. by S. course till half-past 9, and after that on a S.S.E. course. It seems that a man named Benjamin Edmunds went to the wheel soon after 8, and he told us that the vessel was then on a S.E. by S. course, as no doubt she would be, for the purpose of clearing Whitby Rocks. At half-past 8 he told us he went away to his breakfast, and returned in about 20 minutes, and she was then not on a S.E. by S. course, but on a S.S.E. course, thus contradicting the mate, who told us that she was kept on a S.E. by S. course until half-past 9, when they were abreast of the South Cheek of Robin Hood's Bay, which is between 7 and 8 miles to the southward of Whitby Buoy. Edmunds then told us in his examination in chief that between 9 o'clock and 10 o'clock the course was altered by the mate to S. by E. $\frac{1}{2}$ E., when the weather

cleared up; and that when it became thick again the course was again altered to S.S.E. It is true that on cross-examination, when the words were, as it were, put into his mouth by Mr. Brown, he said that she was only kept upon a S. by E. $\frac{1}{2}$ E. course for a very short time, and simply to pass under the stern of a smack; but that seems to be directly in conflict with the evidence which he gave recently to the Receiver of Wreck. What he then said was this, "When we sighted Whitby Buoy a little on the starboard bow the course was altered for a few minutes to S.E. by S., but after the buoy was passed a S.S.E. course was resumed, when it was thick, as it was occasionally." When it was clear the course was changed to S. by E. $\frac{1}{2}$ E." Taking then Edmunds' evidence, that given by him as well in his examination in chief as before the Receiver of Wreck, in preference to that suggested to him on cross-examination, we should be disposed to think that the course steered whilst Edmunds was at the wheel, which was no doubt at first S.E. by S., was afterwards altered to S.S.E., and then to S. by E. $\frac{1}{2}$ E., except when the weather became very hazy, when it was altered back again to S.S.E. Caffey, the man who relieved Edmunds at the wheel, when the latter went to his breakfast, said that, as well as he could recollect, the course which he steered was S.E. by S. $\frac{1}{2}$ S., but that his memory was so bad that he would not undertake to swear what course he steered. Fyfe indeed, the man who was at the wheel from 10 a.m., certainly says that the course steered from that time was S.S.E., but as it was very thick during the greater part of his watch it is not unlikely that she was then kept mostly on a S.S.E. course.

There is, however, this fact before us that the vessel went ashore near the entrance of North Sea Bay, and as there was no tide, and no wind, and no error in her compasses to account for this great deviation from a S.S.E. course, we can only come to the conclusion that that course could not have been steered. But assuming, as Edmunds has stated, in his examination in chief and in his deposition made before the Receiver of Wreck, that the course steered, when it was clear, was S. by E. $\frac{1}{2}$ E., and when it was foggy S.S.E., it would go far to account for the vessel having gone aground where we find her.

But apart from the contradiction between Edmunds and the mate, there are some facts which were stated by the latter which lead us to think that he was not speaking the truth when he said that he kept her until half-past 9 on a S.E. by S. course, and after that on a S.S.E. course. He told us that the course which he usually steered from Whitby to pass the head was S. by E. $\frac{1}{2}$ E., which is what Edmunds said they steered when it was clear. What then could have induced him to steer a S.E. by S. course or $1\frac{1}{2}$ points more to the eastward than he usually steered, for an hour to an hour and a half after passing Whitby Buoy? He tells us that when he went on watch he saw his position, and took his course; and it is, therefore quite incredible that he should have steered such a course. But again he tells us that, when off the South Cheek of Robin Hood's Bay, he ported 1 point; and if he was at that time on a S.S.E., or a S. by E. $\frac{1}{2}$ E. course, his usual course from Whitby, that would put him on a S. by E. or S. $\frac{1}{2}$ E. course, and if so, we could well understand how the vessel would have got far up into Filey Bay, and too far for even a S.E. course, on which the mate put her, before he went down to his dinner to take her clear. Whether the mate was anxious, the weather being thick and foggy, to keep sight of the land, or whether he was trying to cheat the tide, and was thus induced to go closer inshore than he should have done, certain it is that he did not steer as he says he did till half-past 9 a S.E. by S. course, and then a S.S.E. course, for had he done so he never would have come near the land. The cause then of the vessel stranding is the mate having kept her on a course much too far to the westward, and where she ought never to have been.

This being so, the next question on which our opinion is asked is, "Whether the stranding of the said steamship was caused by the wrongful acts and defaults of Arthur Way, the master, and John Hammond, the chief mate?" and as regards the master, "(1) in setting too fine a course on taking his departure from Sunderland, and not making proper allowance for the set of the tide." As to the tide, I think it is quite clear that it could not have put the vessel ashore, and that it would rather have tended to set her off shore. The course, too, which was laid by the master from off Sunderland, namely, a S.S.E. course, was a very proper one, for although it would take him near Whitby Rocks, there would be no objection to that, as the weather, when he set the course, was quite clear, and it would be broad daylight when the vessel got there. On this point, therefore, we do not think that the master was in any respect to blame.

The second question is, whether he was to blame "in neglecting to leave instructions to be called when the

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The next qu "allowing his "alter the co "him?" The authority, and tends that he e officer did alter own authority: that he made helm to go clea was quite right make Whitby l done. Of cou run over the b he made the b clear of it; and course again. can see nothing

But we are blame "In neg "to the ship t "steamship t "stoppage on "vessel requi has told us th of the ship f went on board which he had till 6.40 a.m. 24 hours with fatigued; tha blown, as we he conscious o told they we unconscious o turned in, at by the stewar 10 minutes to into the cabin asks the mate the mate rep then cleared According to that the vesse he reckoned t he told him t that the vesse really tell th speed, and t doubtedly the deck, and to case was, the six hours. T the vessel wa S.E. course; the mate's sta disposed to master. At to be utterly have perceived he may have after he was o half speed; given that the opinion, no e when he was to have know he ought, in to ascertain the mate's a so as he mu they were nea have been sou done so he and that the this vessel w this, therefo we shall there

"vessel arrived off Whitby?" Mr. Roche has stated that, after passing Flamborough Head the navigation would become much more intricate, and that the master was, therefore, quite right in not ordering that he should be called until they got to that point. We think that there is a great deal of force in that observation; and the assessors tell me that in their opinion there was no necessity that he should be called when they were off Whitby; and that it was better that he should then take his rest, so as to be prepared to take command of the vessel after they had passed Flamborough Head. On this point, therefore, also we think that the master was not to blame.

The next question is, was the master to blame "In allowing his second officer, who holds no certificate, to alter the courses without reporting such alterations to him?" The master denies that he ever gave him any such authority, and I am not aware that the second officer pretends that he ever had any such authority. If the second officer did alter the course of the vessel he did it upon his own authority; but, so far as we can see, the only alteration that he made in the course was when he starboarded the helm to go clear of and outside of Whitby Buoy, which he was quite right to do. The master had told him that he would make Whitby Lights right ahead, and that he seems to have done. Of course the master never intended that he should run over the buoy; but he naturally expected that when he made the buoy he would starboard his helm and go clear of it; and after he had passed it would resume his course again. This is what ought to have been done, and we can see nothing in this for which the master can be blamed.

But we are next asked to say whether the master was to blame "In neglecting to be on deck at a time when, owing to the hazy state of the weather, the nearness of the said steamship to the land, and the warning afforded by the stoppage or slowing of the engines, the safety of his vessel required his personal supervision?" The master has told us that, having been engaged in the active duties of the ship from 6 o'clock on Tuesday morning until he went on board at four on Wednesday morning, during which he had had no rest, and not having left the deck till 6.40 a.m. of Wednesday, he had been for more than 24 hours without sleep, and was consequently very much fatigued; that in consequence, if the steam whistle was blown, as we are told it was, he did not hear it, nor was he conscious of the engines having been stopped, as we are told they were twice. He told us that he was quite unconscious of all that had occurred from the time he turned in, at about a quarter after 7, until he was called by the steward, at about noon. He gets up and takes about 10 minutes to dress, and during that time the mate comes into the cabin, and according to the master's statement, he asks the mate what was the state of the weather, to which the mate replied that it had been foggy but that it had then cleared up, and that he could see Speeton Cliffs. According to the mate, what he said to the master was that the vessel was going S.E., nothing inwardly, and that he reckoned they were off Speeton Cliffs; he also said that he told him that the weather had been foggy at times, and that the vessel was going half speed. Now if the mate did really tell the master that the vessel was going at half speed, and that she was on a S.E. course, it was undoubtedly the duty of the master at once to have gone on deck, and to have seen for himself what the state of the case was, the more so as he had been off the deck for nearly six hours. The master denies that the mate told him that the vessel was going at half speed, or that she was on a S.E. course; and seeing that we can place no reliance on the mate's statement as to the courses steered, we are not disposed to believe his word in preference to that of the master. At the same time it does appear to the assessors to be utterly incomprehensible that the master should not have perceived that the vessel was stopped, however tired he may have been, and above all that he did not observe after he was called that the vessel was then only going at half speed; the explanation which is attempted to be given that the engines were burning small coal is, in their opinion, no explanation whatever. If then the master, when he was called, knew, as the assessors think he ought to have known, that the vessel was only going half speed, he ought, in their opinion, to have at once gone on deck to ascertain the cause, and not have been satisfied with the mate's answers, as he seems to have been, the more so as he must have been well aware from the hour that they were nearing Flamborough Head, and that there must have been some cause for her going half speed. Had he done so he would at once have seen the state of the case, and that the land was close to them, and in all probability this vessel would have been saved from going ashore. For this, therefore, we think that the master is to blame, and we shall therefore suspend his certificate for three months,

recommending at the same time that during the period of its suspension he be allowed a first mate's certificate.

And now as to the mate, the first charge against him is for "Continuing too fine a course for Flamborough Head after taking his departure from Whitby." Now if, as Mr. Brown has contended, he steered a S.S.E. course, or, as he himself has said, for more than an hour a S.E. by S. course, and after that a S.S.E. course, no doubt that was not too fine a course. But in our opinion he did not steer those courses, and when he said that he did so he stated that which he knew to be untrue. The course which he steered must have been much more to the westward to take the vessel to where she got ashore, and it was much too fine with such weather as then prevailed.

The next charge against him is for "Not allowing for the set of the tide;" but we have already said that in our opinion the tide had nothing to do with this casualty, and that there was no need to make any allowance for it. We do not therefore find him to blame under this head.

The next charge is for "Neglecting to call the master when the weather came on thick." This, in our opinion, was an act of great negligence on his part. We think that the mate was bound, when the weather came on so thick as to necessitate the stopping of the engines and putting a man on the topgallant forecastle, to have called the master. Mr. Brown has said that it would have been an act of positive manslaughter for him to have done so, the master being so fatigued. But I rather think that it was much nearer manslaughter to have allowed the master to continue asleep in his cabin, and thus to have run the risk of letting the vessel go on to the rocky shore under Flamborough Head, where, if there had been any wind or sea, every soul would probably have been drowned, when by a little timely warning, a little curtailment of the master's rest, this calamity might have been avoided. We think that the mate has been guilty of very great negligence in this respect.

The fourth charge against him is for "Neglecting to keep a man on the look-out forward." Here, too, we think that the mate was much to blame. It seems that when the weather first became foggy he did put a man on the look-out forward, but that wishing to take in one of the sails he called him away to help, as if keeping a good look-out was not far more important than any other duty; and when the sail has been taken in he does not order him back on the look-out. In our opinion the mate has been guilty of very great negligence in this respect also.

The fifth charge against him is for "Neglecting to verify his assumed distance from the land by a cast of the lead." Mr. Brown has stated that the man could not always be taking a cast of the lead, and that he had no reason whatever to do so at that time. But if ever there was an occasion when a cast of the lead should have been taken it was this. The mate before he goes to his dinner sees the loom of the land on his starboard beam, and thinks that it is Speeton Cliffs; he admits that he cannot see more than half a mile towards the land, and thinking himself too near the shore he puts the vessel off upon a S.E. course. But if he was where he believed himself to be, within half a mile of Speeton Cliffs, or of Bempton Cliffs, which are to the south of them, a S.E. course would hardly take him clear of the rocks. He ought at once to have put the ship's head off the shore, and taken a cast of the lead to ascertain his true position. For not doing this we think that he is greatly to blame.

As regards the chief officer, we think that his neglect of duty has been more grave and serious than that of the master, and we shall therefore suspend his certificate for six months. But it has been urged by Mr. Brown that we have no power to suspend this gentleman's certificate, because he was off duty at the moment when the vessel ran ashore. I do not, however, so read the Act of Parliament. The 242nd section of the Merchant Shipping Act, 1854, provides that this Court shall have the power to cancel or suspend the certificate of a master or mate, if "the loss or abandonment or serious damage to any ship, or loss of life, has been caused by his wrongful act or default." Now I think that there can be no doubt that the loss of this vessel was due to the wrongful act and default of the mate, in steering a course too much to the westward in neglecting to call the master when the weather became thick, in neglecting to keep a man on the look-out forward, and in neglecting to verify the assumed distance of the vessel from the land by a cast of the lead. All these are gross acts of negligence and misconduct, and they certainly contributed very materially to the loss of the vessel. We are, therefore, in our opinion fully justified in suspending his certificate.

It was also urged by Mr. Brown that the chief officer is a person 53 years of age, that he has been for 20 years a

certificated officer, that he has been for 13 years in the employment of the Earl of Durham, and that he has a wife and family. We are very sorry to have to punish a man under these circumstances, but we must remember that there are others whose lives have been risked by the negligence and misconduct of this man, and that they probably have wives and children also; and that it is only by the greatest possible good fortune that they have not all perished. In justice, therefore, to these persons, and in justice to the owners of the property which has been sacrificed by this man's neglect, we cannot alter our judgment and allow this man to go unpunished. It seems that this man holds a master's certificate of competency,

and as we do not wish him to remain on shore idle we shall recommend to the Board of Trade that he be allowed a first mate's certificate during the suspension of his master's certificate.

No application was made to the Court for any order as to costs.

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

We concur.

(Signed) GEORGE H. FORSTER, } Assessors.
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