

(No. 808.)

"KILLEENA."

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the formal investigation held at the Small Debts Court, County Buildings, Glasgow, on the 23rd and 24th of November 1880, before H. C. ROTHERY, Esquire, Wreck Commissioner, assisted by Rear Admiral APLIN, R.N., Captain C. Y. WARD and Captain PARFITT, as Assessors, into the circumstances attending the abandonment of the British sailing ship "KILLEENA," of Glasgow, on the 10th of October last, whilst on a voyage from New York to Liverpool.

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

1. That the "Killeena," when she left New York, was in good and seaworthy condition.
2. That the cargo was not properly stowed in accordance with the rules for the Port of New York, and that the shifting boards were not sufficiently or properly secured.
3. That the vessel, although fully laden, was not overladen.
4. That, except so far as relates to the stowage of the cargo, the vessel as laden was seaworthy.
5. That the shifting of the cargo three times, shortly after the commencement of the voyage, was due to the insufficient way in which the shifting boards were secured; and that there is no reason to suppose that the cargo was not on each occasion properly retrimmed, so far as it could be done under the circumstances.
6. That the cause of the vessel taking a heavy list to port on the 6th of October last, was the violence of the gale and the total insufficiency of the shifting boards and their supports.
7. That the master was, under the circumstances, justified in having the main and foremasts cut away, and that the damage caused thereby was properly repaired.
8. That so long as the master and crew remained on board, they took all proper measures, by attempting to retrim the cargo, to save the vessel.
9. That the vessel was prematurely abandoned.
10. That the master is in default, both in regard to the stowing of the cargo, and the subsequent abandonment of the vessel.

For these wrongful acts and defaults the Court orders the certificate of Thomson Ralph, the master, to be suspended for six months.

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

Dated this 24th day of November 1880.

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

We concur in the above report.

(Signed) ELPHINSTONE APLIN,  
Rear Admiral, } Assessors.  
C. Y. WARD,  
WM. PARFITT,

Annex to the Report.

This case was heard at Glasgow on the 23rd and 24th November 1880, when Mr. Douglas appeared for the Board of Trade, and Mr. Foulis for the master of the "Killeena." The managing owner was present, but was not in the first instance represented before the Court. Ten witnesses having been produced by the Board of Trade and examined, Mr. Douglas tendered three affidavits, which, by permission of the Court, were put in and read, and he then asked the opinion of the Court upon the following questions:—

- " 1. Whether, when the "Killeena" left New York, she was in good and seaworthy condition?
- " 2. Whether the cargo was properly stowed, and in accordance with the rules of the Port of New York,

and whether the shifting boards, which were in the hold, were sufficiently and properly secured?

- " 3. Whether she was overladen?
- " 4. Whether, as laden, the vessel was seaworthy?
- " 5. What was the cause of the cargo shifting three times shortly after the commencement of the voyage, and whether it was on these occasions properly retrimmed?
- " 6. What was the cause of the vessel taking a heavy list to port on the 6th of October last?
- " 7. Whether the master was justified in having the main and fore-mast cut away, and whether the damage caused thereby was properly repaired?
- " 8. Whether proper measures thereafter were taken to save the vessel?
- " 9. Whether the 'Killeena' was prematurely abandoned?
- " 10. Whether the master or the mates, or any of them are, or is, in default?"

He further stated that the Board of Trade were of opinion "that the certificates of the master and mates should be dealt with."

Mr. Spens thereupon appeared for Mr. William Newton, the managing owner of the "Killeena," after which Mr. Foulis produced two witnesses on behalf of the master, and he and Mr. Spens having addressed the Court on behalf of their respective parties, and Mr. Douglas having replied for the Board of Trade, 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 "Killeena," which is an iron barque, belonging to the Port of Glasgow, of 815 tons gross, and 795 tons net register, was built in the year 1875, at Partick, in the County of Lanark, and at the time of the casualty, which forms the subject of the present inquiry, was the property of Mr. William Newton, of 97, Buchanan Street, Glasgow, and others; Mr. William Newton being the managing owner.

The vessel left New York on the 26th of August last with a cargo consisting of indian corn and cotton, bound therewith to Liverpool, and having a crew of eighteen hands all told, and on the 10th of October following she was abandoned by her master and crew in latitude 48° 10' north, and longitude 10° 54' west, under circumstances which we shall presently state. But before we proceed to describe the circumstances which led to her abandonment, it will be proper to give some account of the ship and of the way in which the cargo was stowed.

We are told that the vessel left this country in June 1879 for Zanzibar, and having there discharged her cargo she proceeded to Point de Galle, thence to Colombo, thence to Alipee on the coast of Malabar, and then to New York. At New York she obtained of Messrs. Henderson and Company, the ship's agents, a charter to carry a cargo of indian corn and some bales of cotton to Liverpool, and, accordingly, on the inward cargo having been discharged she was placed, we are told, in the hands of a skilled stevedore to prepare the hold for the reception of the indian corn and cotton, and those arrangements were made under the inspection of a surveyor belonging to the Underwriters' Association of New York. It seems that the hold extended from the collision bulkhead forward right aft as far as the bulkhead of the cabin and lazarette, and indeed under the lazarette in the run of the ship; and the first thing that was done to her, was to line this hold completely, from the keelson to the top of the bilge, fore and aft. They then put in the shifting boards, which were nailed to wooden uprights or scantlings, placed between the permanent iron stanchions which ran along the centre of the vessel, at a distance of about 3 feet 9 from one another. Of the wooden uprights, to which the shifting boards were secured, there were sometimes one, sometimes two between each pair of iron stanchions. The shifting boards, which consisted of planks one inch in thickness, were doubled on each side of the stanchions, the centre of the outer planks being placed over the seams of the inner planks, thus forming a thickness altogether of four one-inch planks, two on each side of the stanchions. In the lower hold the shifting boards went from the keelson to the lower deck, the wooden uprights to which they were secured being free at the bottom, but cleated, we are told, at the top. In the 'tween decks the shifting boards, as well as the uprights, commenced at the bottom, but stopped within

three feet of the upper deck; and the uprights, if secured at the bottom with cleats, which seems doubtful, were entirely unsupported at the top. The nails by which the shifting boards were secured to the uprights were 3-inch to 3½-inch. When the hold had been thus prepared, the indian corn was shot into it from an elevator, the whole operation taking from 6 p.m. of one day, to 6 a.m. of the following morning. The whole of the corn shipped was in bulk, completely filling the lower hold and coming up to the top of the shifting boards in the 'tween decks. Upon the corn were then laid some planks, and on these bales of cotton, one row deep, completely filling up, we are told, the 'tween decks. The quantity of corn shipped was 43,750 bushels, equal, we are told, to about 1,080 tons, and of which, from 28,000 to 30,000 bushels were put into the lower hold; and of bales of cotton there were 789, weighing about 80 tons, making altogether 1,160 tons.

Thus laden, the vessel, as I have stated, left New York on the 26th of August, bound to Liverpool, and having a crew of 18 hands all told. According to the second mate, after she had been out only about four days, the cargo shifted to starboard, the vessel at the time being upon the port tack; but the cargo was re-adjusted, and she was, we are told, brought upright again. Four or five days afterwards she took another slight list, but this time to port, the vessel at the time being on the starboard tack. This occurred two or three times, and on each occasion the cargo was re-trimmed, and the vessel was brought again, nearly, if not quite, into an upright position. At length, on the afternoon of the 6th of October following, the wind began to blow strongly from about E.N.E., the vessel being still upon the starboard tack. Sail was accordingly taken in, and at 4 p.m. she was got under lower topsails, main trysail, and mizen staysail. The wind, however, continued to increase, veering round to the north and N.W.; and at length, between 9 and 10 p.m., she gave a sudden lurch to port, and fell over on her side with the lee rail below the level of the water, and the yard arm nearly touching the surface; at the same time the two boats on the lee side were washed out of the chocks and broken all to pieces. All hands at once came on deck, and an attempt was then made to get her on the other tack; owing, however, to her bottom being very foul, the vessel having been out for about 16 months, she would neither wear nor stay, and the two jibs and the foretop mast staysail, which they endeavoured to set, were at once blown away. Finding that the vessel still remained upon her beam ends, with her lee rail under water, the master determined to cut away the topgallant masts, but in doing so, the mainmast went overboard, whether intentionally or not is not quite clear, and the vessel for the time was a little easier. In going over, the mainmast had left a hole in the deck, and the deck being half under water, a good deal of water got down into the hold, until they were able to cover over the hole with canvas and to batten it down. During the night the vessel continued to go more and more over, and accordingly, at about 7 or 8 of the following morning, the 7th of October, the master determined to cut away the foremast, which was accordingly done, and the vessel thereupon righted considerably, bringing her lee rail out of water. That evening the gale began to abate, and on the 8th they were able to get into the lower hold by cutting a hole through the bulkhead of the lazarette, on the starboard side, when it was found that the cargo had shifted away from the starboard side towards the centre, so that it was possible for a man to creep along from end to end. When, however, they were able to get into the 'tween decks it was found that there the cargo had gone bodily over to port, carrying the shifting boards with it, and leaving a space on the starboard side sufficient for a man to walk along upright. Steps were accordingly taken to right the vessel, and with this view a hole was cut through the bulkhead of the lazarette into the 'tween decks on the port side, and some of the grain was taken out, carried up through the cabin, and thrown overboard. Holes were also cut in the 'tween decks on the starboard side, between each pair of beams, in order that the cargo might be shifted from the 'tween decks into the lower hold, and thus fill up the empty space along the starboard side, no feeding hatches having been left in the wings; but an opening had been left in the centre by taking up all the planks between the fore and after hatchways, except the two planks in the middle line of the vessel. In the 'tween decks also the bales of cotton were ranged as far as they would go on the starboard side of the iron stanchions so as to form a kind of bulkhead, and the

grain was shifted from the port to the starboard side of the 'tween decks. These were the measures which the master took to endeavour to right the vessel. Previous to this, however, the master had determined to abandon the vessel, and with that view he ordered the lifeboat to be lowered so as to be available at the first favorable opportunity. No sooner, however, had the boat touched the water than it was stove; with some difficulty the four men who were in it were got out, and she drifted astern and was lost; and they were then left with only the gig and the dingy, and, as we were told, without any oars, all the oars having for some reason or other been put into the lifeboat. They continued to work at the cargo, jettisoning some of it, and shifting other portions from the port to the starboard side until the evening of the 9th, when a French or Italian vessel hove in sight. Signals were at once made to her, and she was asked to stand by them, which she consented to do. On the following morning she was observed to be still lying to, but at some distance off, making, however, no attempt to lower her boat, and the sea was still too high to allow them to lower either the dingy or the gig, even if they had had oars, which they had not. At length, at about 10 a.m., a vessel, which proved to be the "Freeman Dennis," of Yarmouth, hove in sight, and on being requested to take them off, and on being also informed that they had no boat to lower, the "Freeman Dennis" at once sent her own boat, and in three trips succeeded in taking them all off, including the master's wife, who was also on board; so difficult, however, was it even then, although the wind had gone down, for the boat to get alongside, that they had to haul them into the boat by a line. No sooner, however, had they been all safely transferred to the "Freeman Dennis" than the mate of the "Killeena" and two volunteers returned in the "Freeman Dennis" boat to the "Killeena," and succeeded in bringing away the two chronometers and some of the captain's and crew's effects. We are told that when they left her the vessel had about 12 inches of water in her, which she had taken in when the mainmast went overboard, and before they could cover up the hole. This water they had not been able to pump out, the whole of the pump gear having been carried away when the mainmast went overboard; but from the time of covering up the hole the vessel seemed to have made no water. The place where she was abandoned was, as nearly as the captain could say, in about 48° 10' north and 10° 54' west. On the mate returning to the vessel, the "Freeman Dennis" resumed her course, and in about two hours afterwards they lost sight of the "Killeena," and were finally landed at Flushing.

It will now be well to state what ultimately became of the "Killeena." The vessel as we have seen was abandoned by her master and crew on the 10th, and on the 11th a brig, called the "Victory," of Swansea, fell in with her, and having boarded her, endeavoured to ascertain what water there was in her, but no sounding rod could be found with which to sound the well. The boatswain, whose affidavit we have before us, says that he went down into the lazarette but could find no trace of any water there. He adds that he found two spare spars on deck, and spare sails in the locker, and that she appeared to have a list of about 3 feet to port. Owing however to part of the crew being disabled from sickness, the "Victory" had to leave her. On the following day, the 12th, a Norwegian vessel, called the "Nora," which was on her way from Quebec to Barrow, fell in with her, and having boarded her, the second mate, carpenter, and three of the seamen volunteered to go on board to try to get her into port. She was then, we are told, in about latitude 47° 22' north, and longitude 11° 30' west, and was consequently a considerable distance further both to the southward and to the westward, and therefore further away from the land, than when she had been abandoned on the 10th by her master and crew. Having put these men on board, the "Nora" then left her, and the crew having rigged a jury mast in the place of the foremast, they continued to navigate her till the 15th, when they were fallen in with by the "Beatrice," of Annapolis, Nova Scotia, in about latitude 49° north, and longitude 12° 13' west, the vessel having, during the time that the Norwegians had been in charge of her, got more than a degree and a half to the north, whilst at the same time she had been driven further to the westward, owing to the prevalence of easterly gales. By this time, however, it seems that the Norwegians had had enough of it, for on the "Beatrice" nearing them they asked to be taken off, giving as a reason that the vessel was making water; they were accordingly taken off,

and thereupon second mate volunteered they did so, amongst the the "Beatrice" 19th they were of Glasgow, on the coast "Behara" come to term on her voyage upon which "Beatrice" afterwards kept company any further parted in a g three seamen were told by to some of the the canvas main mast they repaired at that time quantity of being 12 inches canvas got and that from she made no the gale abate the northward town, but the winds; and in latitude they were feeling that be impossible to take the night of Fl she was insured Engineer S us that he 2 aft, and of 2 feet on side, which had 23 inches same as she upright.

These, then, with this upon which "when the" and seawas built 100 A1, an severe trial water except fall of the a thorough York she w The next "the cargo" with the "the shifting" sufficient us that no Port of New and that she to the Under it had been was prepared accordance Now one of on Stowage "vessel c" loaded w "not over" in bulk, "can only" bulk." and 795 tons with the c of grain in complied v Another "with over" one inter "more th" or bulkh "bushels."

and thereupon Cunningham the boatswain, and acting second mate of the "Beatrice" and three seamen volunteered to go on board and take charge of her; they did so, and a tow rope having been got up from amongst the stores of the "Killeena" and passed to the "Beatrice," the latter began towing her. On the 19th they were spoken by the steam vessel "Behara," of Glasgow, which was on her way from Bett's Cove, on the coast of Newfoundland, to Swansea. The "Behara" offered to tow her, but as they could not come to terms the "Behara" left her and proceeded on her voyage. On the same day the tow rope parted, upon which another hawser was passed from the "Beatrice" to the "Killeena," but that also soon afterwards parted. From that time the "Beatrice" kept company with her, being unable to render her any further assistance until the 26th, when the vessels parted in a gale of wind, leaving Cunningham and the three seamen alone on board the "Killeena." We were told by Cunningham that on the same day, owing to some of the spare spars having got loose and torn the canvas covering the hole in the deck where the main mast had been, some water got into her, but that they repaired it as soon as they could; and that, except at that time, the vessel made no water whatever, the quantity of water in her when they took charge of her being 12 inches, which never increased at all until the canvas got torn, when it suddenly rose to 22 inches, and that from that time until their arrival at Falmouth she made no more water at all. On the 29th of October the gale abated, and the vessel's head was then laid to the northward in the hope of getting her into Queens-town, but they still encountered nothing but easterly winds; and on the 9th of November following, when in latitude  $48^{\circ} 53'$  north, and longitude about  $14^{\circ}$  west, they were spoken by the steam ship "Leipsic," and feeling that if these adverse winds continued it would be impossible for them to reach port, they engaged her to take them to Falmouth, where they arrived on the night of Friday the 11th. On the following Monday she was inspected by Mr. Wymer the Shipwright and Engineer Surveyor to the Board of Trade, who has told us that he found that she was then drawing 18 feet 2 aft, and 17 feet forward; that she had a freeboard of 2 feet on her port side, and 6 feet on her starboard side, which would give her a list of 2 feet, and that she had 23 inches of water, which he said was about the same as she would have had in her if she had been upright.

These, then, are the principal circumstances connected with this very eventful case; and the first question upon which our opinion has been asked, is, "Whether, when the 'Killeena' left New York, she was in good and seaworthy condition." It seems that the vessel was built of iron in the year 1875, and was classed 100 A1, and from the fact that, notwithstanding the severe trials to which she was exposed, she made no water except through the hole in her deck caused by the fall of the mainmast, there can be no doubt that she was a thoroughly well-built ship, and that when she left New York she was in a good and seaworthy condition.

The next question that we are asked, is, "Whether the cargo was properly stowed, and in accordance with the rules for the Port of New York, and whether the shifting boards which were in the hold were sufficiently and properly secured." The master told us that not being acquainted with the customs of the Port of New York he engaged a stevedore to fit her up, and that she was then surveyed specially by a surveyor to the Underwriters' Association of that port to see that it had been properly done. Let us see, then, how the ship was prepared, and whether the cargo was stowed in accordance with the Rules, for the Port of New York. Now one of the Rules, which I find quoted in "Stevens on Stowage," for the Port of New York, is, that "No vessel exceeding 400 tons register can be entirely loaded with grain in bulk; exceeding 400 tons and not over 500 tons, may take two-thirds of the cargo in bulk, and one-third in bags; and all over 500 tons can only be allowed to take half of their tonnage in bulk." And as the "Killeena" was 815 tons gross, and 795 tons net register, and as the whole of her cargo, with the exception of one tier of cotton bales, consisted of grain in bulk, it is clear that this rule was not complied with.

Another regulation is in these words, "Vessels loaded with over 12,000 bushels of grain in bulk must have one intermediate partition or bulkhead; and if carry more than 20,000 bushels, then additional partitions or bulkheads, so that no bin shall contain over 12,000 bushels." We were told, however, by the master

that there were in the lower hold from 28,000 to 30,000 bushels; and as the lower hold was divided into two compartments by the shifting boards running fore and aft, that would give from 14,000 to 15,000 bushels for each compartment. That regulation, therefore, has also been disregarded. There are other rules also that have been equally disregarded. I have stated that between the iron stanchions running along the centre of the hold, and in the 'tween decks, there were wooden uprights, to which the shifting boards were nailed. In the lower hold these uprights, we were told, were free at the bottom, but at the top they were cleated to the deck. In the 'tween decks, however, the uprights do not appear to have been secured in any way, either at the top or bottom; we were told that they were not cleated at the bottom, and at the top they stopped about 3 feet short of the upper deck, going only as high as the shifting boards themselves; they were put upright, and were held in their place merely by the shifting boards. Let us now see what the regulations for the port of New York prescribe in regard to the shifting boards and stanchions: one of those regulations is that "shifting planks, two inches thick, must extend from the keelson to the deck on each side of the stanchions, fitted tight under and between the beams and carlines; and care," it goes on to say, "must be taken that the stanchions are well secured at both ends." Thus, then, the regulations were disregarded, first in omitting to secure the wooden stanchions or uprights at top and bottom, especially in the 'tween decks; and, secondly, in not carrying the shifting boards to the upper deck. It seems also that the whole of the cargo of grain was shipped between 6 p.m. and 6 a.m. of the following day; that it was done under the superintendence of the master and second mate; and that all that the surveyor of the Underwriters' Association did was to come when the cargo had been shipped, look down the hatchways, and take the draught of water and the freeboard. The Assessors inform me that the fact that the cargo of 43,750 bushels was all shipped during the night, between 6 p.m. to 6 a.m. of the following morning, renders it, in their opinion, impossible that it could have been properly stowed.

The third and fourth questions I propose to take together; they are, "Whether the vessel was overladen?" and, "Whether as laden she was seaworthy?" We are told that the load line was placed at 3 feet 11 from the top of the upper deck, and that when she was laden at New York the water came to about the centre of the disc. In passing from New York into salt water she would, it seems, have risen about two inches, so that her freeboard would then be about 4 feet 1 inch. This would appear to agree with the evidence of Mr. Wymer, that when she arrived at Falmouth, and when she had 23 inches of water in her, her freeboard was 4 feet. Now, taking Mr. Martell's rule, we find that her co-efficient of fineness was .65, and that a vessel with a co-efficient of fineness of .65, and with a depth of hold of 19.2 feet, or about 19 feet 3 inches, ought, strictly speaking, to have a freeboard of 4 feet 7 inches. On the other hand, it was said by the captain that a freeboard of 4 feet would, on a depth of hold of 19.2 feet, give exactly  $2\frac{1}{2}$  inches for every foot depth of hold, and that he had always understood that that was sufficient. What, then, we should be disposed to say was, that this vessel, when she left New York, although fully laden, was not overladen; and that in that respect, and apart from the stowage, we cannot say that she was unseaworthy.

The fifth question that we are asked is, "What was the cause of the cargo shifting three times shortly after the commencement of the voyage; and whether it was upon those occasions properly retrimmed?" There can be no doubt as to what was the cause of the cargo shifting three times before the 6th of October; it was owing to the shifting boards not having been carried up to the upper deck, and to the insufficient way in which they were secured, the wooden stanchions to which they were attached not being fastened, as they should have been, at top and bottom; partly also to the nails by which they were attached to the uprights being only 3 to  $3\frac{1}{2}$  inches long. The chief mate told us that on his going below, after the cargo had shifted the first time to port, he found several of the shifting boards displaced by the nails being drawn out. The second mate also stated that on the same occasion he found many of the shifting boards broken and others displaced, and the cargo shifted over to port. There can be no doubt that on each of those occasions the cargo was retrimmed to the best of their ability; but it was impossible, with such an arrangement of the shifting

boards and uprights, to secure the cargo properly; it was inevitable that whenever the vessel keeled over again, the cargo would go too.

The next question which we are asked is, "What was the cause of the vessel taking a heavy list to port on the 6th of October?" The cause of her taking a heavy list to port on that day was no doubt, in the first instance, due to the violence of the gale, which threw the vessel on her beam ends, and when there the shifting boards, owing to their insecure fastenings, were insufficient to prevent the cargo going bodily over to port. It was said that it might possibly have been better had the captain, when he found the gale coming on, put her upon the other tack; but in our opinion that would have made little difference, for if she had been got on to the port tack, the cargo would no doubt have shifted over to starboard, just as, when she was on the starboard tack, it shifted over to port. The fact which was spoken to by the second mate and one of the crew, that within three or four days of their leaving New York the cargo shifted to starboard, and then a few days afterwards shifted over to port, shews that the shifting boards were utterly insufficient, and that the cargo was prepared to shift to whichever side the vessel might incline.

The seventh question upon which our opinion is asked is, "Whether the master was justified in having the main and fore masts cut away; and whether the damage caused thereby was properly repaired?" No doubt the master was perfectly justified, if the lee rail was, as he has stated, under water, in having the mainmast cut away; and according to the evidence of all the witnesses, it certainly did relieve her; not sufficiently, however, to prevent their having to cut away the foremast also on the following morning. We think therefore that the master was quite justified in cutting away both those masts at the time that he did do so. We think also that he took proper measures to repair the damage done by the fall of those masts, as is proved by the fact that as soon as they had covered the hole in the deck, and battened it down, no more water got into the hold, so long as they remained on board her. What water got into her, found its way through the hole before it could be covered up; and that it was impossible to prevent, the water being about half way across the deck.

The eighth question is "Whether proper provisions were taken thereafter to save the vessel?" In our opinion the measures that were taken after the masts were carried away were proper measures for the purpose of saving the vessel. We were at first led to suppose that the master had cut a hole into the port side of the lower hold through the bulkhead of the lazarette, for the purpose of taking out some of the cargo; this would have been a most improper act, for whatever cargo had been taken from the lower hold on that side, would have been at once filled up from the cargo in the 'tween decks through the opening in the centre of the lower deck, and would thus have tended to keep the vessel down on the port side. We are satisfied, however, that the hole on the port side was into the 'tween decks, whence some of the cargo was taken out and jettisoned, which was a proper measure, and would tend to lighten that side of the vessel. It was a proper measure also to cut a hole on the starboard side, through the bulkhead of the lazarette, so as to allow them to get into the lower hold on that side, as they were thus enabled to cut holes between the beams of the 'tween decks, to serve the place of feeding hatches, with which, unfortunately, the vessel was not furnished, and thus fill up the empty space on the starboard side of the lower hold. In launching, however, the lifeboat when he did, and when, apparently, there was no necessity to do so, thus leaving himself merely with the gig and the dingy, and without any oars, the master in our opinion acted injudiciously, as it did not conduce to the safety either of the vessel or of the lives of those on board.

The ninth question upon which our opinion is asked, is, "Whether the 'Killeena' was prematurely abandoned?" Seeing that the hull of this vessel was perfectly sound, and that she made no water beyond that which had got in before they could cover up the hole made in the deck by the fall of the mainmast; that they were near the entrance to the Channel, and in the track of passing vessels; seeing also that she was navigated from the 26th of October to the 9th of November by only four hands, without any assistance from any other vessel; and that on her arrival at Falmouth, more than a month after her abandonment, she was found to have only 23 inches of water in her, and

a list of only 2 feet to port; we think that there was no justification for her being abandoned, as she was, by her master and crew, consisting of 18 hands altogether. There were spars with which to rig jury masts, and spare rigging and sails on board with which, if they had met with favourable winds, they might easily have taken the vessel into port unaided; or if the winds had continued adverse, they could easily have engaged the services of one of the passing steamers, as Cunningham and his three men did, to take them into port. But instead of that, the master seems to have been the first to give the signal for abandoning her; it was by his orders that the life boat was put out on the 8th of October, in our opinion an utterly unnecessary proceeding, for if it was then his intention to abandon the vessel, he had no right to do so; and if, as he says, he wanted to be prepared for some favourable opportunity to leave the vessel, it would have been better to have waited until that opportunity arose. Again, it was the master's own doing to hail the "Freeman Dennis" to come alongside and take them off; he never asked her to stand by them and assist them or to lend them some oars, but only asked to be taken off. The fact too, that after they had left her, the chief mate returned in the "Freeman Dennis" boat to save the chronometers and some of the master's and crew's effects, and that he had no difficulty in boarding or leaving her, shews that there was no such immediate necessity to abandon her. In our opinion the vessel was prematurely abandoned, and the blame thereof rests with the master. The crew did not come aft to ask him to abandon her; and although, when the master shewed an intention of abandoning her, the crew were quite ready to follow his example, that does not justify the master's conduct; it is his duty to stick to his ship as long as he possibly can, and not to give the first signal to the crew to leave her. In our opinion this vessel might, if her crew had remained by her, have been safely brought into port, either by their own exertions, or with the assistance of one of the many vessels which passed her, and in whose track she was.

The tenth question upon which our opinion is asked is, "Whether the master and the mates or any of them are, or any one of them is in default?" It appears to us that the whole blame for this casualty rests with the master, and with the master only. He has told us that he employed a regular stevedore, and that before the cargo was put in the hold she was inspected by one of the surveyors to the Underwriters' Association at New York, but whether this is so or not, in our opinion makes no difference. The master admitted that he was acquainted with the regulations for the stowage of grain cargoes in the Port of New York; he knew that by those regulations he ought not to have loaded his vessel, being over 500 tons register, with grain wholly in bulk; that he ought not to have had more than 12,000 bushels in one compartment; and that the wooden uprights or stanchions ought to have been securely fastened both at top and bottom. He knows all this, and yet he allows those regulations to be violated by the persons whom he employs, and his only excuse is that he spoke to his agents, Messrs. Henderson, of New York, about it, and "they said that they didn't think there was any fear at that season of the year." But apart from all this, no master has any business to transfer the duties which properly belong to him to another. The Act of Parliament says that,— "No cargo, of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts, or nut kernels, hereinafter referred to as grain cargo, shall be carried on board any British ship, unless such grain cargo be contained in bags, sacks, or barrels, or secured from shifting by boards, bulkheads, or otherwise;" and it then goes on to say that, "If the managing owner or master of any British ship, or any agent of such owner, who is charged with the loading of the ship, or the sending her to sea, knowingly allows any grain cargo to be shipped therein, for carriage, contrary to the provisions of this section, he shall for every such offence incur certain penalties. The Act does not say that the master may transfer his duties to others, and that in that case he shall not be responsible for the consequences. The master neglected his duty in not seeing to the proper stowage of the cargo; and when, owing to the neglect of those duties, the vessel got into difficulties, the master in a panic abandons his vessel, when there was no necessity for him to do so. It was said by his advocate that we must judge of this man's conduct by seeing how a prudent owner, if uninsured, would have acted; we are quite ready to do so, and we

very much doubt if insured, would have been stowed as they have abandoned on the grounds, we are to blame, and that which as a master we shall therefore for six months.

One fact remains out in the course of managing owner originally cost she was insured time, he admitted to 12l. a ton on may observe, for after a 16 month requiring, there however, she w

very much doubt whether a prudent owner, if uninsured, would have been content to allow the cargo to be stowed as this master did, and whether he would have abandoned her, as and when he did. On all these grounds, we are of opinion that the master is greatly to blame, and that he has neglected to carry out the duties, which as a master he had undertaken to perform, and we shall therefore order his certificate to be suspended for six months.

One fact remains to be mentioned, which has come out in the course of the inquiry. Mr. Newton, the managing owner, informed us that the vessel had originally cost 13,500*l.*, and that on her last voyage she was insured for the sum of 12,000*l.* At the same time, he admitted that she was worth only from 11*l.* 10*s.* to 12*l.* a ton on her registered tonnage, a full value, I may observe, for a vessel five years old, and returning after a 16 months' cruise in the Southern Seas, and requiring, therefore, a complete refit. Even then, however, she would only be worth from 9,100*l.* to

9,500*l.*; so that, if the ship had gone to the bottom, Mr. Newton and his co-owners would have stood to win between 2,000*l.* and 3,000*l.* On the other hand, we are told that the freight, which was 1,500*l.*, was insured for only 1,000*l.*; but no charter-party has been produced to shew us the conditions under which the payments were to be made. We think it right to make these observations, although no question has been asked on the point, as it has come out in the course of the inquiry.

No application, and therefore no order was made in regard to costs.

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

We concur.

(Signed) ELPHINSTONE APLIN, }  
                  (Rear-Admiral), } Assessors.  
                  C. Y. WARD, }  
                  W<sup>m</sup>. PARFITT, }

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