

S.S. "City of Limerick."

THE MERCHANT SHIPPING ACTS, 1854 to 1876.

The Court of Survey of Sunderland, held at the County Court, Sunderland, on the 2nd, 3rd, and 4th days of June 1881.

In the matter of an appeal by James Hudson Spencer, the master of the steamship "City of Limerick," of the port of Liverpool,

1. From the report of James Wimshurst, W. H. Laslett, Peter Paxton, H. E. Brown, and George R. Vyvyan, surveyors appointed by the Board of Trade to survey the said steamship, dated the 16th day of May 1881.
2. From the order for the provisional detention of the said steamship "City of Limerick," made on the 14th day of May 1881.

I, Henry Cadogan Rothery, Wreck Commissioner for the United Kingdom, do report that, having heard this appeal, I did, with the concurrence of C. W. Merrifield, Esq., the assessor appointed by the Board of Trade, and of Middlemost Wawn, Esq., one of the assessors for the court of survey at Sunderland, for the reasons set forth in the annexed statement, order the said vessel to be released forthwith.

Dated the 4th day of June 1881.

H. C. ROTHERY,
Wreck Commissioner.

We concur in the above report,
CHARLES W. MERRIFIELD, } Assessors.
MIDDLEMOST WAWN, }

ANNEX TO THE REPORT.

This appeal was heard at the County Court, Sunderland, on the 2nd, 3rd, and 4th days of June instant, when Mr. Gainsford Bruce appeared for the Appellant, and Mr. A. L. Smith for the Board of Trade. Seven witnesses having been produced by the Board of Trade, and examined, Mr. A. L. Smith asked the Court to order "that the 'City of Limerick' be detained until sufficient water ports shall have been cut in her superstructure flush with the top of the spar deck; and until 300 tons at least of ballast shall have been fitted in her in a permanent manner; and until her fore-hatchway shall have been sufficiently strengthened." Three witnesses having then been called on behalf of the Appellant, Mr. Gainsford Bruce asked the Court to order "that the 'City of Limerick' be unconditionally released.

Before we proceed to consider the grounds on which this vessel has been provisionally detained, it may be well to give a short account of her history, and of the nature and character of her construction and equipments. It seems that the "City of Limerick," which is an iron screw steamship, was launched in the year 1855, under the name of the "African," and was classed 100 A1 at Lloyds, she had then two decks, three masts, and was rigged as a barque; she was 280.8 feet long, 34.2 feet broad, and 23.7 feet deep, was 1,529 tons gross, and 1,040 tons nett, and had two engines of 256 horse power. In 1863 she was sold to foreigners, and her certificate was accordingly cancelled. But in the year 1870 she came into the possession of Messrs. Inman & Co., the well-known shipowners of Liverpool; and having been lengthened about 50 feet, and a spar deck added, she was employed by them for the most part as a passenger ship, but occasionally for the conveyance of cattle between this country and the United States of America, from that time until the early part of the year 1880, when she was purchased by her present owner, Mr. William Henry Thompson, who is described as of No. 15, Broadway, New York, but having, I understand, an office in Liverpool. Since then it seems that she has made four complete voyages between this country and the United States, bringing home on each occasion cattle on the two upper decks, and American produce below. On those voyages we are told that the cattle on the topmost deck

were protected in the usual manner by temporary wooden erections; but in the early part of this year the owner having determined to employ her regularly in the cattle trade, sent her to Sunderland for the purpose of having a stronger and more substantial structure erected upon the open deck for the protection of the cattle. With this view the three masts were taken out of her, and two lighter and smaller ones put in their place; the bowsprit and jibboom were removed, and there was then erected upon the spar deck an iron framework, which we will call the superstructure, some 7 feet high, and covering about four-fifths of the deck. The sides of this superstructure are at the present time covered with $1\frac{7}{8}$ -inch planks, secured with nuts and bolts to the framework, the top being left open with the exception of a narrow gangway running from end to end for the convenience of working the ship; but we are told that on the arrival of the vessel at New York, it is intended to cover up the top of the superstructure with planks similar to those on the sides, leaving only some openings in the middle for ventilation. As the vessel stands at present, the following may be taken to be a correct description of her. She has three decks and two small masts, and is schooner-rigged; her length is 331.1 feet, her breadth 34.4 feet, her depth to the tonnage deck 22.9 feet, and to the spar or awning deck 30.4 feet; above which there is this superstructure, standing about 7 feet high, and covering four-fifths of the deck. Her tonnage is 2,535 tons gross, and 1,627 tons net, and she has two engines of 250 horse power combined. Her freeboard, as now laden, is 3 feet 9 inches to the tonnage deck, and about 11 feet to the top of the spar deck, being about 4 inches to every foot depth of hold. There are also on each side of the superstructure three ports, each 6 feet long by 10 inches deep, for the escape of any water that might get into it. It should be added that new boilers have been put into her at Sunderland, and that the engine-room, which was 51.2 feet long, has been reduced to 37.5 feet.

Whilst these alterations were going on, the attention of the Board of Trade officers appears to have been called to her, and a survey having been held upon her by Mr. Wimshurst, the Principal Surveyor of Iron Ships to the Board of Trade, and by Mr. Mills, the chief officer for the district, a report was on the 28th of the same month made by those gentlemen to the Board of Trade, the concluding portion of which is in these words: "The following considerations arise. 1st. As to whether a declaration can be issued, we think from her age and absence of thorough examination, the issue of the declaration cannot be permitted. 2nd. As to whether from the great depth to breadth, and the danger of the top structure getting partly filled with water, the ship is in such condition as that she may be allowed to sail on a sea passage. We think it is possible, with special loading and provisions that she may be made safe to leave the United Kingdom; but she will, without doubt, be dangerous when loaded in a usual method, or with cattle upon the upper deck. We therefore suggest the desirability of the Board leaving the responsibility of such an altogether exceptional case upon a Court of Survey."

What instructions were thereupon given by the Board of Trade, we do not know; but on the 14th of May Mr. Quiggin, the officer having authority to order the detention of a vessel in the Port of Sunderland, served a notice on the master of the "City of Limerick," informing him that he had, under the provisions of the sixth section of the Merchant Shipping Act, 1876, subsection 2, ordered the vessel to be provisionally detained, that a survey would be held upon her within 48 hours at the latest, unless he heard from him to the contrary, and that the ground upon which the vessel had been detained was "improper construction, viz. unusual proportions."

No surveyor having been appointed by the owner or master of the "City of Limerick," Mr. Wimshurst, accompanied by three shipwright surveyors belonging to the Board of Trade, and by Mr. George Vyvyan, a nautical surveyor, on the 16th of May last, made a survey of the vessel, and their report is in these terms: "We hereby report that we have surveyed the ship named above" (that is to say, the "City of Limerick"), "and are of opinion, having regard to the nature of the service for which she is intended, that she is unsafe by reason of the following defects; that is to say, at the time our visit she was afloat and loaded for an outward voyage; her cargo consists of 1,162 tons of iron in the lower hold stowed close, 150 tons of

“ old iron in space next above the hold, and 850 tons of coal for consumption.
 “ Her draught of water was 21·3 aft and 22·9 forward, being 1 foot 6 by
 “ the head, the freeboard, measured from the main deck, is about 3 feet
 “ 9 inches. Her length is 331 feet, breadth 34·4, depth to spar deck 30·4.
 “ It will be seen that this depth is ·88 of the breadth. Nevertheless above
 “ this has been built another light structure about four-fifths of the length of
 “ the vessel for the conveyance of cattle from America. The depth including
 “ this top structure would be about 37·9, or 3½ feet more than the extreme
 “ breadth of the vessel, a proportion unknown in the merchant service in any
 “ other vessel.”

Acting under the provisions of section 6, sub-section 4, of the Act, the master, Mr. James Hudson Spencer, on the 20th of May filed a notice of appeal to the Court of Survey for the district, and it is under these circumstances that the case has come before us.

At the opening of the proceedings an objection was taken by Mr. Bruce, on behalf of the owner, that there was no sufficient ground shown for the detention of the vessel. He stated that the only grounds on which an officer of the Board of Trade was authorised under the sixth section of the Act of 1876 to detain a vessel, were if she was unfit to proceed to sea “by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading;” and that the ground alleged by Mr. Quiggin for detaining her, namely, “improper construction, viz., unusual proportions,” did not come under any of these heads. He said that the word “defective” meant something wanting, but that in the present case it was not pretended that there was anything wanting, but only that the proportions were “unusual,” amounting to “improper construction.” In reply it was said by Mr. A. L. Smith that “improper construction” would certainly be included under the terms “defective condition of the hull;” for that, if Mr. Bruce’s contention was well founded, a vessel manifestly faulty in construction, as for instance with an iron deck, or topsides so heavy that it was quite certain she would founder as soon as she got to sea, could not be stopped by the Board of Trade; and he called our attention to the 15th section of the Act, which says that “if the Board of Trade are of opinion that an appeal under the Act involves a question of construction or design, or of scientific difficulty and important principle,” then a certain course should be followed; evidently, he said, implying that there might be an appeal under the sixth section of the Act on a question of construction, and if so, the case would come under the words “defective condition of the hull.” I confess that I should be very unwilling to adopt the construction which Mr. Bruce wishes us to put upon the words of the Act, unless absolutely compelled so to do; but apart from the terms of the 15th section to which our attention has been called by Mr. A. L. Smith, it appears to us that the words “defective condition of the hull” must mean some defect in the condition of the hull, whether arising from bad materials or from bad construction; something in the condition of the hull which would render her unsafe; and that if the construction of the vessel is of such a nature as to render her “unfit to proceed to sea without serious danger to human life,” a Board of Trade officer is entitled to detain her, and this Court would consequently have power to entertain the appeal. I ought, however, to add that it will not be sufficient for the Board of Trade to prove that this vessel is of unusual proportions, “or that she is of a proportion unknown in the merchant service;” but they must go on and show that those “unusual proportions” amount to “improper construction,” and are of such a character as to render the ship “unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended;” for otherwise we might be stopping all improvements in naval architecture.

And now let us see in what respect the Board of Trade consider that the construction of this vessel is defective, and what it is that they ask us to do. They ask that she be detained “until sufficient water ports shall have been cut in her superstructure flush with the top of the spar deck; until 300 tons at least of ballast shall have been fitted in a permanent manner; and until the fore-hatchway shall have been sufficiently strengthened.” And here a further objection was taken by Mr. Bruce; he contended that,

assuming the vessel to require all these things to be done to her before she left (which, however, he did not admit), they were not the grounds upon which she had been detained. The ground, he says, on which she was stopped, was on account of "improper construction, viz., unusual proportions," not because she had not a sufficient number of port-holes, or ballast, or because the hatchway was not sufficiently strong; and I confess that I think that there is considerable force in this objection. At the same time, I cannot conceal from myself that, if we were now to order the vessel to be released on a technical ground, there would be nothing to prevent the Board of Trade officers, and I am not sure that it would not be their duty, to detain her again if they thought that these alleged deficiencies which they now ask us to have remedied were in their opinion of such a character as to be attended with serious danger to human life, having regard to the service for which the vessel is intended. I think, therefore, that it will be more satisfactory on all grounds that we should proceed to consider whether any of the alleged defects which we are now asked to remedy are of such a nature as to render the vessel "unfit to proceed to sea without serious damage to human life, having regard to the service for which she is intended," and whether therefore a Board of Trade officer would be justified in detaining her.

And first, let us consider her as she now is, and with reference to the voyage on which she is bound, namely, from Sunderland to New York. It has been already stated that the vessel has, as she is now laden, a freeboard of 3 feet 9 inches to the tonnage deck, and of about 11 feet to the top of the spar deck, above which there is the superstructure standing some 7 feet high, making a total height from the water to the open top of the superstructure of about 18 feet. Now, we were told by the witnesses from the Board of Trade that, laden as she now is, the quantity of water which could get into the superstructure over the top would probably not exceed from 10 to 20 tons, and that this would speedily escape by the existing ports, and as there will not be any cargo in the superstructure on the outward voyage, we are at a loss to see any necessity for any more ports. As regards the ballast, it seems that she has now 83 tons of permanent stone ballast in her; besides which we have it on the authority of the Board of Trade Surveyor that there are 1,162 tons of iron in the lower hold, 150 tons of old iron in the space next above, and 850 tons of coal for consumption; and all the witnesses tell us that, if anything, she has now too much stability, and that if she had somewhat less iron in her lower holds she would probably ride easier and better. It is clear, then, that for the outward voyage at any rate she does not require any additional quantity of ballast. As to the fore hatch, again, it appears that the original combings were of iron, $\frac{3}{8}$ ths of an inch thick, and rising above 18 inches above the deck, with a wooden backing outside for the convenience of nailing the tarpaulins. Since her arrival at Sunderland, however, these combings have been raised some 3 or 4 feet by placing on the top of the original iron combings an iron combing of the same thickness, and securing it to the lower combings by a butt strap with nuts, and bolts along the upper and lower edges, and with angle irons at the corners. And after a personal inspection of it, the assessors inform me that in their opinion the fore-hatch is now much better than before it was altered, and that it is perfectly strong and safe. It would seem, then, that for the outward voyage at any rate there is no necessity for any of these things which the Board of Trade now ask us to order to be done; indeed there is not a single witness, except perhaps Captain Kiddle, who could say that she was not in a perfectly fit state to perform the outward voyage to New York. Mr. Wimshurst, the Principal Surveyor of Iron Ships to the Board of Trade, who signed the report of survey of the 16th of May, said that in his opinion she was; and Captain Paton who has been 34 years a master mariner, who has made a great number of voyages across the Atlantic, and at one time commanded the "Great Eastern" steamship, told us that she could safely go to sea; that laden as she now is, she is rather the better for having the superstructure; that she has enough, but not too much, stability; and that he would willingly take command of her for the outward voyage to New York. Under these circumstances it is impossible for us to say that the vessel is not in a perfectly fit state for the outward voyage.

It was contended, however, by the learned counsel for the Board of Trade that we had to look not only to the outward voyage, but likewise to her

homeward voyage, when she would have two tiers of cattle on the two upper decks, and the American produce below, that being the service, he said, for which she is intended. I have some doubt whether we have any right to look beyond the voyage about to be undertaken, that is to say, the outward voyage to New York, for non constat that the owner may on his arrival there contemplate all the alterations which it is said that he ought now to make, namely, open more ports, put more permanent ballast into her, and further strengthen the combings of the fore-hatch. Assuming, however, that it is the owner's intention to send her on the return voyage in the same condition in all these respects as she is now, it may be well to inquire whether even then she would be unfit to proceed to sea without danger to human life. I have already stated that since the vessel has been in Mr. Thompson's possession she has made four voyages to the United States and back, returning on each occasion with cattle, and on two of those voyages we are told she was commanded by her present master, Captain Spencer. Now Captain Spencer has stated that when she left New York in July last under his command she had 372 head of cattle and 666 sheep; and that when she left on the 22nd of September last she had 415 head of cattle and 100 sheep. He told us also that on each of these occasions he had only 83 tons of stone ballast, as at present; that there was American produce, consisting of grain, bacon, butter and other provisions, in the lower hold, as well as in the lower 'tween decks, except in the way of the hatches where the provender for the cattle was stored. He said that on the second of those occasions they fell in with the equinoctial gales, and made very bad weather, but that the vessel behaved remarkably well, losing only one head on the first voyage, and 16 on the last voyage, and those principally under the spar deck. It was also admitted by Mr. Wimsurst that the additional weight of this superstructure over the more temporary wooden erections with which cattle ships are usually fitted, and with which this vessel appears to have been fitted on her previous voyages, would be very small, not worthy of consideration; and seeing, too, that since her former voyages her three masts have been taken out and two lighter ones put in their places, and that the bowsprit and jibboom have been removed, thus relieving her of a large amount of top hamper, it would be difficult to say that she is not now in as good, if not better, condition to make the homeward voyage with a similar cargo, namely, cattle and American produce, than before. We are therefore unable to see that there is any necessity either for more ports or for more permanent ballast to enable her to perform her homeward voyage with safety. On the contrary, the conclusion would rather seem to be that, having performed several previous voyages, one of them under trying circumstances, with perfect safety, no more ports or ballast are necessary. I may add that, if the necessity arose, nothing could be easier than to knock away some of the planks along the bottom of the superstructure, and thus make a continuous water-port. As regards, too, the additional ballast which it is proposed to put into her, we are rather disposed to think that if 83 tons of permanent ballast has hitherto been found sufficient for her for the homeward voyage, 300 tons would probably be too much, and might, by sinking her more deeply in the water, possibly render her less safe.

Whilst, however, it was admitted by the witnesses for the Board of Trade that the vessel could by proper and careful stowage be made fit for the homeward voyage, it was said that she would, if not so carefully loaded, and with her lower hold and lower 'tween decks full of American produce, and with two tiers of cattle on her two upper deck, probably be unfit to proceed to sea. But what right have we to suppose that the master or owner would now load her improperly on her arrival at New York? We have the evidence of her four previous voyages, when she has brought over cattle and American produce, and there is no reason to suppose that she will not be equally carefully laden on her future voyages; at all events, it would be time to detain her when it is found that she is not so carefully laden.

One point yet remains to be considered with reference to this superstructure. It was said that, although the weight might not be much greater than that of the temporary wooden erections which are usually carried by cattle ships, yet that with its iron framework it was both too weak and at the same time too strong; too weak to resist such an Atlantic wave as Captain

Paton told us he once encountered in the course of his 34 years' experience, when the deck was swept clear from end to end; and too strong to be swept away, as a temporary and weaker structure would be, and that there would then be left a tangled mass of animals and angle irons, which would be a serious danger to those on board. It is of course very difficult to answer such an argument; but it must be remembered that the vessel in which Captain Paton was when his deck was swept by an Atlantic wave was a much smaller vessel, and had a much lower freeboard, and that the higher freeboard and greater strength of the superstructure of the "City of Limerick" would render her much less liable to be damaged than if she had a lower freeboard, or if the superstructure were weaker. It appears to us that it is more probable that, if damage were done to the superstructure, it would be by the knocking away of some of the planks, the result of which would be to give a freer egress for any water that might have got into it, but would hardly be a cause of serious danger to the vessel herself or to those on board.

As a proof also of her unseaworthiness, we were told that neither the Liverpool Underwriters Association nor the Bureau Veritas would class her; but it must be remembered that when a vessel is classed she is classed; to use the words of Mr. West, the chief surveyor of the Liverpool Underwriters Association, "for general mercantile purposes," leaving the stowing of the vessel to the master or the owner. And whilst it is obvious that a vessel of such unusual proportions might easily be so loaded as to render her unsafe, it is clear from the evidence that, if properly loaded, she might be very well adapted to bring cattle and American produce from the United States to this country, and we have no right to suppose that the owner will not load her properly.

The conclusion, then, to which we have come is, that whether we look to the outward or to the homeward voyage, this vessel is not "unfit to proceed to sea without serious damage to human life, having regard to the nature of the service for which she is intended," and that consequently the Board of Trade officers had no right to detain her. Indeed it may be a question, looking at the very large trade in live cattle which appears to be springing up between this country and the United States, and to the great importance of bringing over the animals in a healthy condition, whether it is not advisable that the animals should be carried in some such superstructure as this upon the upper deck, whence their droppings could be readily swept into the sea, rather than that they should be put down in the hold of the vessel, which might thus be permanently infected by them. If so, Mr. Thompson would be entitled to some praise for having designed a construction apparently so well adapted for the carriage of cattle. Under these circumstances, we have no option but to order the vessel to be released forthwith.

One point remains to be noticed. At the commencement of the proceedings the learned counsel for the Board of Trade offered to leave the question of costs and damages, if any, to the Court, but to this Mr. Bruce, on behalf of the master and owner, refused to assent. As soon, however, as the judgment had been given, Mr. Bruce stated that his parties had instructed him to say that on consideration they would now be ready to leave the question of costs and damages to the Court, but to this Mr. A. L. Smith was not now prepared to assent. We give, therefore, no opinion as to whether costs or damages are due in this case, or to whom.

H. C. ROTHERY,
Wreck Commissioner.

We concur,
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MIDDLEMOST A. WAWN.

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