

(No. 2488.)

"COWSLIP."

The Merchant Shipping Acts, 1854 to 1876.

IN the matter of the formal Investigation held at the Sessions House, Westminster, on the 11th day of March 1885, before H. C. ROTHERY, Esquire, Wreck Commissioner, assisted by Captains RONALDSON, KIDDLE, R.N., and PATTISON, as Assessors, into the circumstances attending the abandonment and loss of the sailing ship "COWSLIP," of South Shields, in the North Minch, on the 9th of February last.

*Report of Court.*

The Court, having carefully inquired into the circumstances of the above-mentioned shipping casualty, finds, for the reasons annexed, that the abandonment and loss of the said vessel was due to the wrongful acts and defaults of Henry Weberling, the master, and it accordingly suspends his certificate for twelve months; at the same time recommending that during the suspension of his master's certificate he be allowed a first mate's.

The Court makes no order as to costs.

Dated this 11th day of March 1885.

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

We concur in the above report.

(Signed) A. RONALDSON,  
JOHN L. PATTISON,  
JAMES KIDDLE, } Assessors.  
Capt. R.N., }

*Annex to the Report.*

This case was heard at Westminster on the 11th day of March instant, when Mr. Muir Mackenzie and Mr. Arnold White appeared for the Board of Trade, and Mr. Botterell for the master of the "Cowslip." The owner of the "Cowslip" was present, but was not represented by either counsel or solicitor. Nine witnesses having been produced by the Board of Trade and examined, Mr. Muir Mackenzie handed in a statement of the questions upon which the Board of Trade desired the opinion of the Court. Mr. Botterell then addressed the Court on behalf of the master, and the mate of the "Cowslip" having been heard on his own behalf, and Mr. Muir Mackenzie having replied for the Board of Trade, the Court proceeded to give judgment on the questions upon which its opinion had been asked. The circumstances of the case are as follow:—

The "Cowslip" was a wooden barque, belonging to the Port of South Shields, of 356 tons gross and 343 tons net register. She was built at Sunderland in the year 1857, and, at the time of her loss, was the property of Mr. Isaac Whitfield, of No. 2, John Street, Sunderland. She left Sunderland on the 29th January last, with a crew of 10 hands, and a cargo of 539 tons of coal and 30 tons of coke, bound to Motril, near Malaga, in Spain. On the 31st she was off Scarborough, and the wind being from S.S.W. to W.S.W. with every appearance, he said, of its continuing from the southward and westward, the master determined to go north about, and accordingly her head was put about, and after passing through the Pentland Firth, she had got on the 6th of February somewhere to the westward of the Isle of Lewis. Up to this time, we are told that she had not made much water, not more than could be pumped out in a spell of from five to ten minutes every four hours. On the 6th, however, she began to make a good deal of water, rendering it necessary for the crew to be kept almost continually at the pumps, and as the vessel could make no way against the strong south-westerly gale which was then blowing, the captain determined to put about, and to run for Long Hope at the south end of the Orkneys. Before reaching it, however, the wind came away from the eastward, and the master

then put about and tried to make Roag Loch, which is on the west side of Lewis. When, however, they were within a couple of miles of it, the wind changed to the southward, and he again put about and stood away for Long Hope; but the wind heading him he tried to get into Stornoway. In the meantime, the pumps had been kept continually at work, but they were unable to make them suck, and during the 8th they had to clear them several times from the small pieces of coal, which got into them. At length, at about 9.30 a.m. of the 9th, the pumps became entirely choked, and the water then increased very rapidly, and the vessel began to get somewhat unmanageable. Between 4 and 5 p.m. they were about three miles from Tolsta Head, which bore about N.W. by N., and finding that the vessel was fast settling down, the master ordered the boats to be got out, and the whole of the crew having got into them they pushed off, and in about half to three-quarters of an hour afterwards the vessel was observed to founder. They pulled about during the night, and on the following morning landed at a little place called Gress, on the coast of Lewis.

These being the facts of the case, the first question upon which our opinion has been asked is: "When the vessel left Sunderland, was she in all respects in good and seaworthy condition?" It seems that the vessel was built in the year 1857, she was consequently 27 to 28 years old at the time of her loss. Originally she was classed A1 for 10 years, but on the expiration of that time her class was not renewed. She seems from Lloyd's book to have had some substantial repairs done to her in 1867, but not sufficient apparently to restore her to her class; in 1876 she had some damage repairs, and the last time she seems to have been surveyed by Lloyd's was in March 1878. At the end of April 1882, she was purchased by Mr. Whitfield for the sum of 710*l.*, or a little less than 2*l.* a ton on the gross tonnage, and he thereupon put a new keel and some new beams into her, besides doing other repairs, at a total cost of about 500*l.* After this we are told that repairs were done to her from time to time, the total amount of which was 242*l.*, but no proof was given by the owner of this by the production either of the bills or of his books. She was regularly employed by Mr. Whitfield in taking out coals and coke to the Mediterranean ports, returning with Esparto grass; but for the last 3 or 4 months before her departure on her last voyage she had been laid up owing to want of employment, and then a shipwright was employed for some 8 or 9 days at 6*s.* 8*d.* a day to caulk her up to the 9 foot line, and to do some little repairs about the deck, amongst other things to repair the coamings of the hatchway of the chain locker. This witness was produced to speak to her good condition, but no one else, who had done any repairs to her, it being Mr. Whitfield's practice to buy the materials, and to employ jobbing shipwrights to do the necessary repairs. Now it was stated by the master that the weather almost from the time of leaving port had been very bad, and he wished us to believe that this was quite sufficient to account for the state to which the vessel had been reduced, necessitating her abandonment. The master's statements however as the weather were not confirmed by the entries in the log book, nor by the published weather charts, which represent the weather as not having been so very bad, not more than what might naturally be expected at that season of the year, and which a good seaworthy ship bound across the Bay of Biscay should have been able to encounter. We are thus reduced to this alternative, either we must hold that the vessel went to sea in an unseaworthy state, and that that is the cause of her having made so much water, or that something was done to her by the captain, which caused her to leak so badly, that she had to be abandoned. Now a court is always very unwilling to hold that a person has been guilty of a criminal offence without some very positive evidence of the fact; and although, as we shall presently see, the antecedents of the master lay him open to very grave suspicion, we are disposed, looking at the age and character of the vessel, and to what had recently been done to her, to think that her loss was due to her not having been, when she last left Sunderland, in so good and seaworthy a condition as she ought to have been, rather than that the master has been guilty of the criminal act of colluding with the owner to lose her.

The second question which we are asked is, "Were the pumps sufficient and in good order, and were they sufficiently protected from the cargo?" There is no reason to think that the pumps were not sufficient, or that they were not in good order, for they seem to have worked well, until they became choked with the coal at about 9.30 a.m. of the 9th. It is clear, however, that they could not have been sufficiently protected from the cargo, otherwise it would never have got into them.

The third question which we are asked is, "Having regard to the age and condition of the vessel, was she overladen?" She had, we are told, about 570 tons of coal and coke on board, which would be a little over 50 per cent. of the gross tonnage, which would not be an excessive amount. She had a freeboard also, we are told, of 4 feet 1 inch, the centre of the disc being 3 feet 1 inch below the deck, and the whole of the disc about six inches out of water. We are not, therefore, prepared to say that she was overladen, or that the freeboard was not sufficient.

The fourth question which we are asked is, "Was the cargo properly stowed and distributed?" It seems to have been stowed by a skilled stevedore, who told us that they filled the main hatchway first with coal, and then put some coal down the fore and after hatchways, and coke above it, leaving an empty space at each end of the ship, which would be the proper and usual way of stowing and distributing the cargo.

The fifth question which we are asked is, "Was the state of the wind and weather on the 31st of January such as to justify the master in deciding to proceed through the Pentland Firth?" Had the destination of the vessel been to the westward, there might have been some reason for the master going north about, when the wind came away from the southward and westward, and there was every appearance of its continuing in that direction. Seeing, however, that his destination was to the south, the assessors are of opinion that he was not justified, particularly at that season of the year, when he might reasonably expect to meet with bad weather in going round the north of Scotland.

The sixth question which we are asked is, "Did the vessel make any unusual quantity of water on the 6th of February?" It is admitted that from that day she made an unusual quantity of water.

I will take the seventh and eighth questions together; they are (7) "Was every possible effort made after the 6th of February to get the vessel into port?" and (8) "Did the failure to get the vessel into port arise from causes beyond the control of the master?" We are told that on the 6th of February the vessel began to make an unusual quantity of water, and that from that time they had to work the pumps constantly. It must therefore from that time have been apparent to the master that he could not continue his voyage, as to reach his port of destination he would have to cross the Bay of Biscay, where, it being the winter time, he would be likely to encounter stormy weather. It was therefore his duty to have got into some port or other, as soon as possible in order to have the vessel properly overhauled, and the leak stopped; but instead of doing so he remains from the 6th to the 9th beating about between the Island of Lewis and the Orkneys, until the vessel becomes so full of water that it is necessary to abandon her, and during all this time he made no attempt to get any assistance either from any of the fishing boats in the neighbourhood, or from the steamer, which he admits he saw shortly before they abandoned her; he did not signal to any one of them. If the master had been anxious to lose the vessel, he could hardly have acted differently. In our opinion he did not take the steps which he ought to have done and which were at his disposal to obtain the requisite assistance to get him into port.

The ninth question which we are asked is, "Was every possible effort made to ascertain the cause of, and to stop the leak?" The only leak of which the master and mate can tell us, is one on the starboard side of the captain's cabin, and which they got at by cutting away some of the lockers, and a portion of the lining of the cabin; and although we are told that they stuffed in some oakum they could not succeed in stopping it altogether. The captain, however, said that there must have been leaks in other parts of the vessel, for that that leak would not account for all the water that got into the vessel, but they could not be got at, owing to the vessel being full of cargo, and it was not possible in the then state of the weather to lift the hatches. We are therefore, not prepared to say that

every thing was not done to ascertain the cause of and to stop the leak.

The tenth question which we are asked is, "Were the pumps used with sufficient frequency?" It seems that the vessel did not make much water until the 6th, not more than could be cleared out by working the pumps once every four hours for a spell of 5 or 10 minutes. But from the 6th, the pumps seem to have been worked almost continuously, and quite as frequently as so small a crew could do.

The eleventh question which we are asked is, "Was the vessel navigated with proper and seamanlike care?" For the reasons already stated, we think that she was not.

The twelfth question which we are asked is, "Is any, and what, blame attributable to the master for the loss of the vessel?" In our opinion the master is to blame for having attempted to go north-about, more especially at that time of the year, seeing that he was bound to the south, and for having neglected to take the proper measures to get the vessel into a port of safety, or to obtain assistance for that purpose.

The thirteenth question which we are asked is, "Is any, and what, blame attributable to the mate for the loss of the vessel?" No blame, in our opinion, is attributable to the mate, the management of the ship being entirely in the master's hands.

The fourteenth question which we are asked is, "Is any, and what, blame attributable to the owner for the loss of the vessel?" In our opinion, the owner is to blame for having sent the vessel to sea in an unseaworthy state, having regard to the nature of the voyage and the time of the year.

The fifteenth question which we are asked is, "What was the cost of the vessel to her owner?" We were told by the owner, that he gave 710*l.* for her, at the end of April 1882, that he then spent 500*l.* upon her, giving her a new keel, some new beams, and doing other repairs, and that he had since spent about 242*l.*, but of this he gave no proof beyond his own statement.

The sixteenth question which we are asked is, "What, in the opinion of the Court, was the value of the vessel when she left on her last voyage?" It is not very easy to say what she was worth, but looking to her age and character, to what seems to have been done to her, and to the fact that within a few days of leaving port, without having encountered any very exceptionally bad weather, she made so much water that she had to be abandoned, the assessors are of opinion that she could not have been worth at the utmost, more than about 2*l.* 10*s.* 0*d.* a ton, or about 900*l.*

The seventeenth question which we are asked is, "What were the insurances effected and how were they apportioned?" According to the owner the vessel was insured for 1,000*l.*, and the freight, which we are told was about 400*l.*, but of which about 150*l.* to 160*l.* had been advanced, for 200*l.*

Lastly, it is said that the "Board of Trade are of opinion that the certificates of the master and mate should be dealt with." There is nothing, so far as we can see, to connect the mate with the loss of this vessel; the whole blame rests with the master and the owner. If, indeed, it had been proved that this master had colluded with the owner to cast this ship away, the only conclusion to which the Court could have come would be that he was not a proper person to have the charge of any vessel whatever, and in that case we should have cancelled his certificate. Grave, however, as the suspicions are against both the owner and the master, we have not felt ourselves justified in saying that they have combined to cast her away. At the same time, we think that the master has been guilty of very great neglect and very unseamanlike conduct; first, in taking her round the north of Scotland when his destination was to the south; and secondly, in making no attempt to get her into a port of safety, but allowing her to drift from the 6th to the 9th of February between the Island of Lewis and the Orkneys without seeking to obtain any assistance from the numerous vessels which he must have fallen in with during that time. Under these circumstances we shall suspend his certificate for 12 months.

I cannot, however, conclude this judgment without calling attention to some circumstances, which seem to us to throw very great suspicion on the conduct both of the master and of the owner.

And first, as regards the master, this is not the first time that this gentleman has come before this Court; for he was before us only in July last in the case of the "Constance," and he then admitted that he had, within the previous 3 or 4 years, succeeded

in losing three vessels, viz., the "Marli," the "Hebe," and the "Constance," all three belonging to a Mr. Bambrough, of Sunderland, and under circumstances, not very dissimilar to the present case, namely, by their leaking in a very unaccountable manner. Captain Weberling, indeed, seems to have had a peculiar aptitude for losing his ships, for he told us that out of the 9 or 10 vessels which he had commanded he had lost 5 by foundering, and as he said with some pride without the loss of a single life; so that the argument of his advocate, Mr. Botterell, that he was very unlikely to have combined with the owner to cast this vessel away, seeing that he had a son on board as an ordinary seaman, is not deserving of much consideration, as Captain Weberling seems to have managed so well, that very little risk was run by those on board the vessels which he lost. And yet notwithstanding these successive losses he is engaged by Mr. Whitfield to command the "Cowslip," on the recommendation of Mr. Bambrough, who, Mr. Whitfield said, told him that Captain Weberling was a very good man, and that he had no fault to find with him, but that he had had some little dispute with him about accounts.

And now as to Mr. Whitfield's antecedents. Mr. Whitfield has owned, it seems, either in whole or in greater part, from first to last, 11 vessels, and of these he has succeeded in losing 9, namely, the "Cassandra" in 1878, the "Roman Empress" in 1879, the "Lady Jocelyn" in the same year, the "Sceptre" also in 1879, the "Verbena" in 1881, the "Selborne" in 1883, the "Eleanora" in 1883, the "Berwick" in 1884, and lastly, the "Cowslip" in 1885. It is certainly a very remarkable record, and some at least of them, if not all, appear to have been insured beyond their respective values. We have no proof that Mr. Whitfield sent these vessels to sea with the intention of losing them, but the loss of so large a number seems to shew either that he has been peculiarly unfortunate, or that he did not use all reasonable means to insure that they should go to sea in a proper and seaworthy condition. Mr.

Whitfield also claims credit, as the master did, for the fact that no life was lost on board any of his vessels, except in one case, that of the "Selborne," which disappeared with all hands. In the other cases, some vessel most fortunately appeared on the scene, just as in the case of Captain Weberling, to save the crew from going down with the vessel. The experience which these two gentlemen have had in regard to foundered and abandoned vessels is, to say the least, very remarkable.

At the conclusion of the inquiry, Mr. Muir Mackenzie asked that the owner should be condemned in the costs; but it appears to me that a condemnation of an owner in some 50*l.* or 100*l.* *nomine expensarum*, and as a punishment for having sent an unseaworthy ship to sea, is not a satisfactory way of dealing with a case of this kind. If the owner has committed so grave an offence, a condemnation in costs is not a sufficient punishment, and I am anxious not to give him the opportunity of saying that he has been already punished in this court for the offence, and of urging it as an excuse for his not being punished, if he deserves it, in any other court.

Mr. Botterell also, whilst reserving to his client the right of appealing from this sentence, if he should be so advised, asked that, in the event of his not doing so, he should be allowed a first mate's certificate; and as we have no desire that the man should be deprived altogether of the means of earning a living during the period of the suspension of his master's certificate, we shall recommend to the Board of Trade that during that time he be allowed a first mate's certificate.

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

We concur.

(Signed) A. RONALDSON,  
JOHN L. PATTISON,  
JAMES KIDDLE, } Assessors:  
Capt. R.N., }