

(No. 2825.)

“FURIUS” (S.S.)

The Merchant Shipping Acts, 1854 to 1876.

IN the matter of the formal Investigation held at the Sessions House, Westminster, on the 14th, 15th, 21st, 22nd, and 23rd days of January, and the 5th, 6th, 9th and 11th days of February 1886, before H. C. ROTHERY, Esquire, Wreck Commissioner, assisted by Captain PARFITT, J. H. HALLETT, Esquire, Captain KENNEDY, and Rear-Admiral MORESBY, as Assessors, into the circumstances attending the stranding of the steamship “FURIUS,” of London, at the entrance to Corunna Harbour, on the 17th July of last, and the subsequent loss of the said vessel.

Report of Court.

The Court, having carefully inquired into the circumstances of the above-mentioned shipping casualty, finds, for the reasons annexed, that the stranding and loss of the said vessel was due to the negligent navigation thereof by John George Kish, the master, and it accordingly suspends his certificate for twelve months, and condemns Thomas Kish, of No. 65, John Street, Sunderland, in the county of Durham, ship-owner, the owner of the said vessel, to pay to the solicitor of the Board of Trade the sum of seventy pounds and three pence (70*l.* 0*s.* 3*d.*), and to the Tyne and Wear Steamship Insurance Association, one of the principal underwriters to the ship, the sum of fifty pounds (50*l.*) towards the expenses of this investigation.

Dated this 11th day of February 1886.

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

We concur in the above report.

(Signed) WM. PARFITT,
J. H. HALLETT, } Assessors.
H. C. KENNEDY,
J. MORESBY, }

Annex to the Report.

This case was heard at Westminster on the 14th, 15th, 21st, 22nd and 23rd days of January ultimo, and the 5th, 6th, 9th and 11th days of February instant, when Mr. Muir Mackenzie appeared for the Board of Trade, Mr. Ince for the owners, Mr. Brewis for the master of the “Furius,” Mr. Pollard for the Tyne and Wear Steamship Insurance Association, one of the principal underwriters of the vessel, and Mr. Laing for Mr. Griffin, a clerk to the owner. Eleven witnesses produced by the Board of Trade, and one produced by Mr. Laing, having been examined, Mr. Muir Mackenzie handed in a statement of the questions upon which the Board of Trade desired the opinion of the Court. Mr. Pollard, Mr. Laing, Mr. Brewis, and Mr. Ince then addressed the Court on behalf of their respective parties, and Mr. Muir Mackenzie having been heard in reply, 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 “Furius” was a steel screw steamship, belonging to the Port of London, of 1,160 tons gross and 748 tons net register, and was fitted with engines of 130 horse-power. She was built at Grangemouth in the year 1884, and at the time of her loss was the property of Mr. Thomas Kish, of Sunderland, Mr. Thomas Kish being the managing owner. She left Bona, in Algiers, on the 9th of July last for Leith, with a crew of 18 hands all told, and a cargo consisting of from 600 to 700 tons of barley and compressed hay, and under the command of Captain John George Kish, the owner’s brother. At first the weather was moderate, but after passing Gibraltar they met with strong head

winds, which considerably impeded their progress, and at 6 a.m. of the 17th the chief engineer reported that they were running short of coals; upon which the master determined to put into Corunna to obtain a fresh supply, and she was accordingly steered for that place. At about 10 a.m. they were abreast of the Hercules Tower, upon which the steam steering gear was shipped, and the engines were put at half-speed, and they continued from that time steering by the land, and keeping under a port helm about half a mile from it, until they brought the Light of San Antonio to bear from two to three points on the starboard bow. At 10.45 p.m. the engines were put at slow, and shortly afterwards, when nearing the Pedrido Reef, which runs out for about half a mile from the shore, the captain, observing that they were rather too close in shore, ordered the man at the wheel to starboard the helm. It was found, however, that the wheel was jammed, upon which the master jumped down from the upper bridge and, having taken the wheel himself, ordered the man to go and see whether the chains were clear, and at the same time he ordered the engines full-speed astern and the anchor to be dropped, but before the anchor could be dropped, or the vessel had lost her way, she struck on the end of the Pedrido Reef, and the wind and sea being from the N.E. caught her on the port quarter and drove her stern in on the Reef. Finding that there were rocks ahead and astern the master, with the assistance of a pilot boat which had come up, laid out a kedge in a N.E. direction, but before they could haul upon it the vessel began to heel over with the falling tide, upon which the boats were got out, and in about twenty minutes from the time of striking all the crew got into the boats. One of the boats was then sent off to Corunna, but the other two remained alongside, and when daylight appeared they returned to the vessel, and by hauling on the kedge got her stern into deep water, but finding that she did not come off they left her and proceeded to Corunna for assistance. Ultimately a portion of the cargo was saved, but the vessel herself became a total wreck, under circumstances which I will presently state.

Before proceeding to deal with the questions which have been submitted to us by the Board of Trade, I will not omit to state how admirably they have in our opinion been prepared, and how well calculated to bring out clearly the main issues in the case. Now, the first question which we are asked is, “What was the cause of the stranding of the vessel?” According to the master it was due to the ship’s head having gone to starboard just before he ordered the helm to be starboarded. But Ferguson, who was the man at the wheel, says nothing about the ship’s head going to starboard before he got the order to starboard; what he says is, that he got the order “to starboard a bit,” and then found that he could not move the wheel. Nor indeed does the master, in the letter which he wrote to the owner on the 20th of July, say anything about the vessel’s head having gone to starboard; what he says is, “On entering, the steam steering gear refused to act, and before her way could be stopped she struck the El Pedrido Reef.” Indeed, Mr. Ince admitted that the vessel had probably got nearer to the shore than she should have done when the order was given to starboard, owing probably to the wind and sea, which was from the N.E.; and it is to this no doubt that the casualty was due. The master allowed the vessel to get nearer to the shore than he should have done, so that, when the order was given to starboard she was heading for the Pedrido Reef, and the helm not acting the vessel struck before they could stop her way.

The second question which we are asked is, “Whether the steam steering gear was of such a nature as to be at all times efficient, and whether the hand steering gear was so fitted that it could be instantaneously used in the event of the steam steering gear not acting?” The steam steering gear with which the vessel was fitted is Beck’s patent, described as the “Climax,” and as combining hand and steam steering gear. And I am informed by Mr. Hallett, the engineer assessor, the benefit of whose assistance I have on this occasion, that it is of a very good and simple construction, and strong, being fitted with helical teeth. The

steam steering gear, we were told, was worked from the upper bridge, whilst the hand steering gear was worked from the lower bridge; and it was so fitted that, if the one became jammed, the other could be instantly applied, unless indeed the chains were fouled or the driving wheel jammed, in which case of course neither would work. It was said, however, that the connecting rod of the steam steering gear was weak, and that they had had to repair it no less than three times, once at Glasgow in July 1884, again at Bilbao in the October following, and lastly at Swansea in June last, just previous to the departure of the vessel on her last voyage. But Mr. Meldrum, the chief engineer, has told us that after the last repairs, when the rod was considerably strengthened, he considered that it was quite strong enough, and it was so reported by the surveyor. And as a fact, the casualty did not arise from any defect in this rod.

The third question which we are asked is, "Whether the master was acquainted with the navigation of the approaches to Corunna, and whether under the circumstances he was justified in attempting to take the vessel into the harbour without a pilot?" The master has told us that he was well acquainted with the approaches to Corunna, having been there several times, I think he said five times before; and we have no reason to think that he was not so. But whether he was therefore justified in attempting to take the vessel in without a pilot is a very different thing. The sailing directions for the West Coast of France, Spain, and Portugal, at page 224 say that, "All vessels above 50 tons are compelled to employ a pilot in entering Corunna. A vessel requiring one should make the usual signal at the fore." Now the captain admits that he made no signal for a pilot, and that it was his intention, if he could, to slip in without taking one, and thus evade payment of the pilotage dues. For this, in our opinion, there was no justification whatever.

The fourth question which we are asked is, "Whether at 11 p.m., on the 17th of July, a safe and proper course was set for the harbour, and whether due and proper allowance was made for the tide and currents?" According to the master, the course which he took after passing the Hercules Tower, was to steer by the land keeping from half a mile to a mile from it, until he brought San Antonio Light from two to three points on his starboard bow; and if this was the course steered, and no doubt it was, it was exactly the course which would land him where he got, namely, on the end of Pedrido Reef. At page 224 of the same book of sailing directions it is said that, "The eastern shore of the peninsula from Pradeiras Point" (the N.E. extremity of the peninsula, on which Corunna is situated) "to San Antonio Castle, is foul and rocky, with reefs projecting from it, of which the Pedrido is the most dangerous. This reef extends in an E.N.E. direction from the Peña de las Animas, which is a small rugged rock 18 feet above high water, lying N.E., $1\frac{1}{2}$ cables from the castle, and having a channel a cable wide, obstructed with rocks between it and the N.E. angle of the city." This then was a part of the navigation which it was the master's special duty to avoid. Moreover, the course which he should have taken is very clearly laid down at page 225 of the sailing directions. It is there said that, "In entering the bay with a fair wind and smooth water, run towards the land between Seixo Blanco and Mera Points, until San Diego Castle opens of San Antonio Castle; then steer towards San Diego Castle, keeping it its own breadth open of San Antonio Castle to clear the Pedrido Reef, which should be given a berth of a quarter of a mile in passing." It is true that these directions give the course only when approaching the harbour at daylight, but they shew very clearly what would be the proper course at night. Thus it will be seen that the bearing of the San Antonio Light from the end of the Pedrido Reef is a little to the west of S.W.; the course, therefore, which the captain should have steered after passing Pradeiras Point was to keep her on her course towards the opposite shore, between Seixo Blanco and Mera Points, until he got San Antonio Light to bear S.W. by W., and then to have steered for the harbour, keeping the light open a little on his starboard bow, which would have taken him well clear of the Pedrido Reef. In our opinion the course steered was neither a safe nor a proper course, more especially as the wind and the sea were from the N.E., which would tend to set him over towards the shore.

The fifth question which we are asked is, "Whether upon approaching the end of the Pedrido Reef the

steam steering gear refused to act, and, if so, what was the cause of it?" We have been told that the steam steering gear refused to act, but what the cause of it was we have no means of knowing. We were told that it was afterwards found that five of the cogs of the driving wheel were broken off, three above and two below; but this would not necessarily prevent the wheel from turning; but whether they were broken off before or after the wheel became jammed none of the witnesses could say.

The sixth question which we are asked is, "Whether prompt and proper measures were taken to disconnect the steam steering gear and steer the vessel by hand, and otherwise to prevent the stranding of the vessel?" As soon as it was found that the wheel would not act, the master, we are told, jumped down from the upper bridge and went to the hand wheel, at the same time ordering the man to go and see whether the chains were clear; and he then ordered the engines to be put full speed astern and the anchor to be dropped, but they were then so close to the reef that before her way could be stopped she struck.

The seventh question which we are asked is, "Whether the vessel was navigated with seamanlike skill and care?" In our opinion the vessel was not navigated with seamanlike care and skill. Instead of steering by the land and thus getting her into dangerous proximity to the Pedrido Reef, the master should have kept her on her course until he brought San Antonio Light to bear S.W. by W., and then have steered a course for the harbour, keeping the San Antonio Light a little open on his starboard bow, which would have taken him a good quarter of a mile clear of the Pedrido Reef.

The eighth question which we are asked is, "Whether the master and officers are, or any of them is, in default in respect of the stranding?" In our opinion no blame attaches to any of the officers for the stranding of the vessel; the whole blame rests with the master, who was at the time on the bridge directing the navigation of the vessel.

The ninth question which we are asked is "What was the cost of the vessel to her owners?" The "Furius" it seems was built by Messrs. Dobson and Charles, of Grangemouth, for Messrs. Macbeth and Gray, of Glasgow under an agreement dated 22nd September 1882; but on the 23rd of October following Messrs. Macbeth and Gray transferred their interest in her to Mr. Thomas Kish. The price which Messrs. Macbeth and Gray agreed to pay was 20,000*l.* for the vessel, and 130*l.* for the steam steering gear. The price which Mr. Kish was to pay to Messrs. Macbeth and Gray was 21,500*l.*, the amount to be paid as follows:—2,688*l.* in cash, and 2,687*l.* by acceptance at six months, when the vessel was framed; the same amounts when she was plated; the same amounts when she was launched; and the same amounts when she was completed. Now it certainly does seem to be a very curious circumstance that Mr. Kish should have been willing to pay to Messrs. Macbeth and Gray the sum of 21,500*l.* for a vessel which Messrs. Dobson and Charles were quite willing to supply him with for 20,130*l.*, and the more so, as it seems that Mr. Kish had two other vessels, the "Janus" and the "Cyrus," sister ships, built of steel on the same specifications, and very nearly of the same dimensions, and both built by Messrs. Dobson and Charles. One hardly sees why Mr. Kish, knowing as he must have done Messrs. Dobson and Charles, did not go direct to them if he wanted such a vessel as the "Furius."

The tenth question which we are asked is, "What was her value when she left the United Kingdom?" The vessel, it seems, was completed in March 1884, and from that time was kept continually running with heavy dead weight cargoes of ore and other goods until June 1885, when she left this country with a cargo of patent fuel for Bona. Now Mr. Kish has told us that, although he gave only 21,500*l.* for her originally, he considered that when she last left the United Kingdom she was worth to him 23,000*l.* But how he arrives at this sum, except by adding together all that he had ever spent upon her, we are somewhat at a loss to understand, and if we rightly understand Mr. Ince, that is what an owner is entitled to do. He told us that he thought an owner had a perfect right to cover himself for the amounts that he had expended upon her, and to say, "I do not care whether ships go up or whether they go down, I have spent so much money upon this vessel, and I claim to be recouped that amount." Now I can well understand that an owner might say, "This ship is worth to me much more than

"she would fetch in the open market, I have a profitable occupation for her, and she is well adapted for that trade, and it will be a serious loss to me if I lose her, for I shall find a difficulty in replacing her." That I can well understand, but that is not Mr. Kish's position as regards this vessel. She was at the time engaged in carrying compressed hay at 21s., and barley at 7s. a ton, and the gross amount of freight that she would earn on the homeward voyage was 451l., of which 59l. had been advanced at Bona, leaving a balance of 392l. to be received at Leith. And taking into account the expenses on the voyage, the port charges, the cost of the coals, and the wages and provisions of the officers and crew, which would all have to come out of the freight, it would leave very little profit on that voyage, the more so as Mr. Kish has told us that his portage bill was about 270l. a month. On the ground therefore of her earnings she could hardly be said to have been worth very much to Mr. Kish. But a circumstance came out in the course of the inquiry, which seems to shew what value Mr. Kish would be disposed to put upon her, if he were entirely unprejudiced in the matter. I have already stated that there were two other steamers of which Mr. Kish was the managing owner, the "Cyrus" and the "Janus"; of the former Mr. Kish owns one share, of the latter nine shares. They were, as I have said, built by Messrs. Dobson and Charles, on the same specifications and very nearly of the same dimensions, the "Janus" having engines of 150 horse power, whilst the "Cyrus" and "Furius" had engines of 130 horse power. They were both built of steel, and under special survey, and were classed 100 A1, the "Janus" and the "Cyrus" having been completed in 1883, whilst the "Furius" was completed in March 1884. It seems that in January 1885, Mr. Kish issued a circular to his shareholders, of which the following is a copy:—"Dear sir, With a view to reduce the very heavy cost of insurance, I beg to advise you that from the 20th February next, I purpose insuring the following steamers for the sums set opposite to their names." And amongst the vessels I find the "Cyrus" and "Janus," each with the sum of 15,000l. opposite to their names. In what amounts these two vessels were then insured, there is nothing to shew, Mr. Kish having refused to tell us; but it is clear that it was for more than 15,000l. Then in January 1886, Mr. Kish issues another circular, which is in these words, "Sunderland, 20th January 1886, Dear sir, Owing to the depressed state of the freight market, and the present low value of shipping property, I find it will be absolutely necessary to make a considerable reduction in the insurance of the steamers under my management; and I propose to insure the several steamers from 20th February next as follows:—" and then follow the names of the vessels, amongst which we find the "Cyrus" and "Janus," each with the sum of 12,000l. opposite to them. And then the letter goes on as follows, "In the event of any of the steamers being lost, I think I shall be able to replace them for the sums for which I propose to insure them, and the large saving of insurance would give me a better chance of making the boats pay, as at present the heavy insurance takes up all their earnings. If you agree to the proposed reductions I expect to make them pay better, as I have still fair employment arranged for them. If I do not hear from you to the contrary, I shall understand that you agree to the reductions proposed. Yours truly, THOMAS KISH." It follows, therefore, that in January 1885, Mr. Kish thought that each of these two vessels, the "Cyrus" and "Janus," might fairly be insured for the year commencing in February 1885 for the sum of 15,000l. each; and in January 1886 that they might fairly be insured for the ensuing year for 12,000l. each, adding that in his belief they could, in the event of their being lost, be replaced for the latter sum. How then was it possible for Mr. Kish to believe that a nearly sister ship, only one year younger, could be worth 23,000l. In the opinion of the assessors, 14,000l. would have been her outside value at the time when she was lost.

The eleventh question which we are asked is, "What were the insurances effected on her, or on any interest in her, and against what risks at the time she was lost, and how were they apportioned?" Mr. Ince has brought in a list of the outstanding insurances, and its accuracy has been vouched for by Mr. Kish, the owner; and from it it would seem that she was insured in the Tyne and Wear Association for 5,000l., in the North of England for 3,000l., in the Newcastle General

for 2,000l., in the National for 3,000l., in the Standard for 2,000l., in the Whitby Iron for 1,500l., in the Whitby Mutual for 1,000l., in the Empire for 1,000l., in the Alliance for 500l., in the Albion for 500l., in the Great Britain for 500l., in the Durham for 1,000l., making a total of 21,000l. upon the ship herself. In addition to this there were insurances at Lloyds' on "disbursement policy proof of interest" for 1,000l.; at Lloyds' again "on premium policy proof of interest" for 1,000l.; in the Newcastle Total Loss Association "on commission, &c., so valued" for 1,000l.; in the Great Britain Steamship Premium Insurance Association, policy "proof of interest" for 1,000l.; in the Sunderland Insurance Premiums Office for 840l.; and on the Glasgow Underwriters "on premiums policy proof of interest" 1,000l., making a total of 5,840l. on commissions, disbursements, premiums of insurance, &c. There was also a valued freight policy at Lloyds' for 1,000l., and another in the Tyne and Wear Steamship Freight Insurance Association for 600l., making a total of 1,600l. on freight, although the balance of freight which the owner would receive, in the event of the vessel completing her voyage in safety, was only 392l. Thus we see that Mr. Kish had policies for 21,000l. on the ship, for 5,840l. on disbursements, commissions, and premiums of insurance, and for 1,600l. on freight, making a total of 28,440l., all of which Mr. Kish told us that he expected to receive, the vessel having been lost on the way. Now it may be well to see what would have been Mr. Kish's position if the vessel had completed her voyage in safety and had arrived at her destination, as compared with what it would be if he had the good fortune to lose her on the way. If she had arrived in safety at Leith, he would have found himself saddled with a vessel for which he had little or no profitable employment, and which would have been worth, say, at the outside about 14,000l., in addition to the small balance which would remain out of the freight after payment of the charges thereon. On the other hand, if she was lost, he would receive, or at all events would claim to be entitled to, the sum of 28,440l.; in other words, Mr. Kish would find himself more than 14,000l. richer. I take no account of the calls which he would have to pay to the mutual clubs, for these would have to be paid whether the vessel arrived at her destination or not. Moreover, we are told that there was a mortgage on the vessel for 11,000l. with interest at 9 per cent.; and allowing, say, 1,000l. for interest on the mortgage for one year, and 2,000l. for calls in the mutual clubs, Mr. Kish would, if the vessel had gone to the bottom, and he had received all the insurances, have sufficient not only to pay off the mortgage and interest and the calls of the mutual clubs, but have besides enough remaining to purchase a perfectly new vessel, quite as good as the "Furius," and free of all encumbrances.

The twelfth question which we are asked is, "Whether every possible effort was subsequently made by the master, officers, owner, his agent, and Mr. Muir to get the vessel off?" And first let us see what was done after the vessel had got upon the rocks. It seems that on the 18th of July the owner received a telegram from the master announcing the stranding of the vessel, and that he at once communicated with Mr. Carr, the Secretary to the Tyne and Wear Association, one of the principal underwriters on the ship, who on the same day informed him that it was their intention to send out their agent, Mr. Muir, to Corunna; and he requested Mr. Kish to give his master instructions to render all possible assistance to Mr. Muir on his arrival. Mr. Muir arrived at Corunna on the 23rd, and was followed on the 27th by a Mr. Griffin, a clerk to Mr. Kish. Previous, however, to Mr. Muir's arrival the captain had engaged assistance to get the cargo out of the ship, but had taken no steps towards getting the vessel off; but on Mr. Muir's arrival advertisements were inserted in the papers for tenders to get the vessel off, on the principle of "no cure no pay;" and in consequence he received from a diver at Corunna named Antonio Parga an offer to get the vessel off and take her into Corunna for the sum of 2,500l. On making inquiries, however, in regard to Parga's character, and his means of carrying out his contact, Mr. Muir came to the conclusion that it would not be expedient to employ him. In the meantime, however, Mr. Carr had on the 27th July informed the owner, Mr. Kish, that he had instructed Mr. Moffat of Bilbao to communicate with Mr. Muir at Corunna in regard to raising the ship; and accordingly on the 1st of August Mr. Moffat proceeded to Corunna, and after inspecting the vessel on the same day entered into an agreement with Mr. Muir to get the vessel off, take her

into the harbour, thence tow her to Bilbao, and put her into dry dock for the purpose of having her bottom inspected, for the sum of 3,000*l.* In pursuance of this agreement a tug arrived from Bilbao on the 6th of August, bringing six carpenters, two engine fitters, a diver named Sylvestre, and some three or four labourers to assist him, as well as two boilers and three pumps, a 10-inch pump, an 8-inch pump, and a 6-inch pump, and other materials. No time seems to have been lost in getting the materials on board the wreck, and having rigged up the 10-inch pump over the fore hold, they were just about to set it to work, when on the 11th a gale came on, which obliged them to leave her, and on their return on the 13th it was found that the vessel had sustained very considerable damage, and that the leaks, which had before been well under control, were then permanently under water, so that it was necessary to employ more divers. Accordingly an attempt was made to obtain two divers from Ferrol, but without success. They proceeded, however, to work at the wreck in a fashion until the 27th of August, when the water being very low, Mr. Muir went down and examined the work at which the diver, Sylvestre, had been employed, and he told us that he found that all that the diver had been doing was useless, as the wedges which he had been driving into the leaks had only had the effect of opening them more widely. Other measures were then attempted, but apparently without any great result, and it was then determined to get a second diver from Bilbao; but within a day or two after his arrival, bad weather again set in, during which the vessel was so seriously damaged, that on the 12th of September Mr. Moffat gave up the contract, and ultimately the wreck was sold.

And now let us see what efforts the master made to get the vessel off. He does not pretend to say that he made any. His case is that it was impossible to do anything until the cargo had been got out of her, and that before this had been done Mr. Muir, the agent for the underwriters, had come out, and had taken charge of the salving operations.

Again Mr. Kish, the owner, tells us that, as soon as he heard of the casualty, he informed the underwriters of it, and they thereupon expressed their intention to send out their agent, Mr. Muir, and that thereupon his responsibility ceased, he having abandoned her to the underwriters. And with regard to Mr. Griffin, the owner's clerk, all that we need say is that, according to his own account, he was sent out, not to look after the ship, but only after the cargo, and that consequently no responsibility rested upon him.

There remains then Mr. Muir, the underwriter's agent, who it is admitted had charge of the salving operations from the time of his arrival on the 23rd of July, five days after she had taken the ground. Now it must be borne in mind that, before she struck, the vessel had been going for a quarter of an hour at half speed, and then for about five minutes slow, and that at the moment of striking the engines were going full speed astern, so that she could hardly have struck with much force; the place too, where she lay, was, except with a N.W. gale, almost land locked, being on the eastern or inner side of the peninsula on which Corunna is situated; she was on the edge of the reef with her stern in deep water, and there is a rise and fall of about 15 feet at spring tides. There was therefore every reason to suppose that the vessel would come off, and that seems to have been the opinion of all who saw her. Mr. Muir of course thought that she would come off, otherwise he would hardly have sanctioned the heavy expenses which he did. Mr. Parga told us that he thought he should be able to get her afloat in two tides. Mr. Moffat said that, when he first saw her on the 1st of August, which would be about a fortnight after she had got ashore, she was "in such a position as she was likely to be removed from." Senor Echevarria of Bilbao, a captain in the Spanish merchant service, and contractor for the salvage of vessels, who tendered for the salving of this vessel, told us that, when he saw her on the 1st of August, "it appeared to him that she was under very favourable conditions for getting off, which he believed he should be able to effect in two tides." Lastly there is Miguel Abrisqueta, one of the carpenters employed by Mr. Moffat, and who first saw her on the 7th of August, nearly three weeks after she had grounded, and his opinion was "that she was in a very favourable condition for getting off, not only on account of the few damages she had sustained, but as well in view of the advantageous position she was in to put her afloat." With this evidence before us,

it certainly does appear very extraordinary that she should not have been got off. Of course it is very difficult for us to say whether the necessary appliances and assistance could have been obtained at Corunna to get her afloat; some allowance also must be made for the natural indolence of the Spanish character. According to some of the witnesses the want of success was due to the insufficient means employed by Mr. Moffat and to the bad condition of the boilers, but this is expressly denied by Mr. Muir and Mr. Moffat. What however Mr. Muir attributes his want of success to are the intrigues carried on by Mr. Griffin, in the interest and at the instigation of the owner, Mr. Kish, and that there was an impression at Corunna that some persons were desirous that she should not come off, seems to be generally admitted. Let us see then whether there is any evidence that there were any such intrigues going on.

This then brings us to the thirteenth and fourteenth questions, which are as follow: "Whether Mr. Griffin entered into any and what arrangement with Mr. Long or Antonio Parga with a view to destroy or prevent the salvage of the vessel?" and, "Whether Mr. Griffin offered to Mr. Long any sum or sums of money or other inducement with a view to prevent the salvage of the vessel?" The story told by Mr. Muir is that on the 5th of September Mr. Long came to him at his hotel in a very excited state, and said that he had gone into his office through a private door, and had found Mr. Griffin and Antonio Parga, the diver, sitting in his private room with the door leading into the public office locked, and with a paper before them; that they appeared much scared, but that he had said nothing to them, and that he had then come straight to the hotel, and told Mr. Muir what he had seen. Mr. Long added that he thought it was an agreement to blow up the "Furius" with dynamite. Mr. Moffat was then sent for, and on his arrival was told what Mr. Long had seen. Mr. Long then said that the reason why he thought that it was an agreement to blow up the "Furius" was because of Antonio Parga's bad character, and from a previous conversation which he had had with Mr. Griffin, when Griffin offered to give him 300*l.* if he (Long) would get rid of the ship, and that on a subsequent occasion he had increased his offer to 1,000*l.* Mr. Long accordingly advised them to have a watch put on the vessel, which they accordingly did from that time. Now, admitting the truth of all that Mr. Muir has said, what after all does it all amount to? Simply that Mr. Long told Mr. Muir and Mr. Moffat that he had been offered first 300*l.*, and then 1,000*l.*, by Mr. Griffin to blow the ship up; and that he had seen Mr. Griffin and Parga with a document before them, which he thought was an agreement to blow up the ship. At the best it is merely hearsay evidence, and Long has not been produced to substantiate the truth of the statement that he is said to have made to Muir and Moffat, nor is there any deposition even from him. On the other hand Griffin has distinctly denied that any offer was ever made by him either to Mr. Long or to Parga to destroy the ship or to prevent her coming off, and Parga has also sworn that no such offer was ever made to him. As regards too the document referred to, and which was supposed to be an agreement to blow up the "Furius," both Griffin and Parga have given us this account of the matter. They said that, sometime after the accident to the "Furius," a vessel called the "Tunstall" came ashore some 12 miles from Corunna, and that Parga had been engaged to salve the cargo, and that, finding that there was a valuable cannon on board the vessel, the importation of which was prohibited in Spain, Parga asked Griffin to find out, if he could, what it was worth, and that, when Mr. Long found them together in his office, Griffin was writing a letter for Parga to a friend of his, named Crudge, in London, in which he asked him to ascertain for what the gun was insured, as a guide to its value. A copy of that letter was brought in, and was sworn to by Mr. Griffin. With this evidence before us, it is impossible for us to say that Mr. Griffin made any offer, either to Mr. Long or to Parga, to blow up the vessel or to prevent her from coming off. I may add that all parties seem to be agreed in describing Long as a worthless character, who has been put in prison for smuggling, and whose word is not to be relied upon; so that the whole story about the offers may have been concocted by him.

The fifteenth question which we are asked is, "Whether Mr. Griffin offered to Mr. Muir a sum of 1,000*l.*, and subsequently a sum of 2,000*l.*, and if so, for what purpose were those offers made?" According

to Mr. Corunna about walking latter Mr. M. "thir that it off, th offere "Fur anyth they would go to be a difficu trade, ship, she w had t and t and of the co the ve off, s const that, would not d off an it har under repli "off conve here No this Mr. M. in eff did n said t also t empl 5 wec to be almo 16th and have Mr. G of hi in re sayin the v if th to ge vent out, A ge almo spiri he m after with one impl disp all t befor were verd Th "W "vo "ov "of "ei An opin eithe culp was two conv purp easte place and dang

to Mr. Muir, about a week after he had arrived at Corunna, and consequently about the end of July, and about three days after Mr. Griffin's arrival, he was walking with Mr. Griffin on the Promenade, when the latter said to him, "I believe I can trust you." Mr. Muir replied, "Yes, you can trust me with any thing." Mr. Griffin then said, referring to the ship, that it was a bad job for them, for that, if she was got off, they were certain to lose 4,000*l.*, and he then offered Mr. Muir 1,000*l.* if he would not get the "Furius" off. Mr. Muir replied that he could not do anything like that, adding that he could not see how they would lose 4,000*l.* Mr. Griffin replied that it would take four months before she would be ready to go to sea; upon which Mr. Muir said that it would be a bad job if they lost the ship, for they would find it difficult to get the shareholders, in the then state of trade, to go in for another ship, as she was a very fine ship, and that they could not easily get a better one, as she was a handy type of ship. Mr. Muir said that he had two conversations with Mr. Griffin on the subject, and that on the first occasion he had offered him 1,000*l.* and on the second 2,000*l.* He also said that at one of the conversations he had pointed out to Mr. Griffin that the vessel was not yet off, and that, even if she did come off, she might be so damaged that she might be a constructive total loss; and that Mr. Griffin then said that, if he made it a constructive total loss, the offer would still hold good. Mr. Muir replied that he could not do anything in that way, but that, if she did come off and was a constructive total loss, he would not fight it hard. Mr. Muir added that he gave Mr. Griffin to understand that he would help him, and that Griffin replied, "You will do your damndest to get the vessel off." Mr. Griffin categorically denied that any such conversation ever passed between them, so that we have here oath against oath.

Now what strikes us as so very extraordinary in all this is that, although Mr. Griffin had been offering Mr. Muir first 1,000*l.*, and then 2,000*l.*, to induce him in effect to commit a felony, Mr. Muir admits that he did not reject these offers with indignation, but only said that he could not do anything of the kind; he has also told us that he never reported the matter to his employers at home until the 6th of September, some 5 weeks after it had occurred; and that he continued to be on the most intimate footing with Mr. Griffin, almost down to the time of his leaving Corunna on the 16th or 17th of September. According to Mr. Griffin, and which was not denied by Mr. Muir, they seem to have led a very rowdy life in Corunna, which Mr. Griffin says unfitted Muir for the efficient discharge of his duty. Mr. Muir attempts to justify his conduct, in remaining on terms of intimacy with Griffin, by saying that Griffin did not exactly ask him to destroy the vessel, he only asked him "not to get her off;" as if there could be any difference between not attempting to get her off, and doing something which would prevent her coming off, when he had been specially sent out, and was being paid to do his best to get her off. A gentleman, who could thus dally with what amounts almost, if not altogether, to a felony, namely conspiring to throw away a vessel, added to the fact that he makes no report of it to his employers until long afterwards, and remains on terms of the closest intimacy with the person who has attempted to bribe him, is not one in whom we should be disposed to place the most implicit confidence. On the other hand we are not disposed to place much confidence in Mr. Griffin; and all therefore that we can say is that on the evidence before us it is not possible to say, whether the offers were made, or whether they were not made. Our verdict must be the Scotch one of "not proven."

The sixteenth question which we are asked is, "Whether in the opinion of the Court the loss of the vessel was due or contributed to by the master, owner, Mr. Griffin and Mr. Muir, or any or either of them, and whether any blame attaches to any or either of them in that respect?"

And first as regards the master, there is in our opinion no doubt that the stranding of this vessel was either done wilfully, or that it was due to gross and culpable negligence on the part of the master. If it was wilful, and was arranged before hand between the two brothers, the owner and the master, what more convenient spot could have been selected for such a purpose than the Pedrido Rocks, on the inner or eastern side of the Peninsula, on which Corunna is placed; a spot admittedly well known to the master, and where the vessel might be wrecked without any danger to the lives of those on board? If, on the other

hand, it was not wilful, it was a gross and culpable act on his part to bring the vessel in amongst those dangerous rocks, when the proper course to have steered was well away to the eastward, where there was plenty of water. That this man was to blame for the loss of the ship, there can, in our opinion, be no doubt.

As regards the owner there is, as Mr. Muir Mackenzie has observed, probably no direct evidence to connect him with the loss of this vessel; but the circumstances are in the highest degree suspicious. Let me state what those circumstances are. First, then, there is the fact that the vessel, as we have seen, was enormously over insured, that Mr. Kish stood to win about 14,000*l.* by the loss of the vessel over and above what he would have had in case she had reached her destination in safety. If she was lost on the way he would recover, or at all events would claim to be entitled to, the whole amount insured upon her, and would be able to pay off the mortgage of 11,000*l.* on the vessel, interest thereon for one year, all the calls that might be made upon him by the mutual insurance clubs, leaving him 14,000*l.* with which to purchase an equally good vessel free of all incumbrances. It was certainly a great object to Mr. Kish that the vessel should not arrive safely at her port of destination. In the next place Mr. Kish seems to have been either a very fortunate, or very unfortunate, shipowner, for he has lost in a comparatively short time a very large number of vessels. In December 1881 he lost the "Tartessus" near Bilbao; in December 1882 he lost the "Plutus" in Australia; in November 1883 he lost the "Hymettus" near Rotterdam; in February 1884 he lost the "Emily" near Belfast; in October of the same year he lost the "Majus" near Sydney; in January 1885 he lost the "Bortonus" in Australia; in June of the same year he lost the "Delphus" near Sunderland; and in July following he lost the "Furius" near Corunna. All these were total losses, the "Hymettus" and the "Delphus" being constructive total losses. We find also that three of these vessels, the "Tartessus," the "Plutus," and "Furius" were at the time of their loss commanded by his brother, Mr. John George Kish, and had Mr. Pindar as chief officer.

I should add that two of the cases, namely, the "Hymettus" and the "Emily" came before this Court. In the inquiry into the "Hymettus," which took place in December 1883, I do not think that there were any questions asked as to the insurance; but in the inquiry into the "Emily," which took place in March 1884, some very curious facts came out. It was proved that the vessel, which was 787 tons gross and 497 tons net, and was fitted with engines of 90 horse power, and which was built in the year 1876, was valued at the time of her loss in 1884, eight years afterwards, by Mr. Kish at the sum of 14,000*l.*, and that she was insured for that amount; whilst the freight, which amounted to only 215*l.*, was insured for 500*l.* She had been stranded a great many times, how many times Mr. Kish could not tell us, but he remembered the three last times; the first time was in March 1883, when she was got off and repaired at the expense of the underwriters. The next occasion was in October of the same year, when she was again got off and repaired at the expense of the underwriters; and on each of these occasions the repairs cost above 4,500*l.* Then there was the last stranding in the February following, almost immediately after leaving Belfast Lough, under circumstances of the very gravest suspicion. The circumstances in that case were of so suspicious a character that our impression was that there had been two unsuccessful attempts to destroy her, and that it was determined that on the third occasion it should not fail.

There is also very grave suspicion attaching to Mr. Kish for having sent Mr. Griffin to Corunna. According to Mr. Kish he sent Mr. Griffin out because he was doing nothing particular in London, and as he was out of health, he thought it would be a change for him, and that he might assist in the matter. According to Mr. Griffin he was sent out to look after the owner's interests, and to save the cargo. If, indeed, Mr. Griffin was sent out to Corunna for the benefit of his health, the life, which according to his own admission he led there, was not very well calculated to attain that end. But we have great difficulty in seeing what were Mr. Griffin's duties at Corunna. The owner, according to his own statement, had at once abandoned the vessel to the underwriters, and as to the cargo, Mr. Kish had informed the owners that he had a trusted agent there, Mr. Long, who would look after their interests, and there was also his own brother, the

captain, there. What therefore had Mr. Griffin to do at Corunna? We are quite at a loss to say.

Lastly, we have the matter of the log book. It seems that the log book was taken away by the chief officer, in order that he might produce it at the inquiry that was expected to be held in London. The inquiry could not be held at the time, owing to the absence of the master at Corunna, and accordingly the chief officer, thinking that the inquiry was abandoned, gave the log book to his wife, telling her that it would not be wanted any more, and that she might destroy it, and she accordingly did so. Now Mr. Kish has told us that the practice in regard to the log books was that they should be deposited in his office, either when they were done with, or when the ship returned to Sunderland. Now the chief officer lives at Sunderland, and why, when he got back to Sunderland, and thought that there would not be any inquiry, he did not return it into the owner's office, as he knew was the practice, having been so long in Mr. Kish's service; and why Mr. Kish himself, who knew that he had a claim for above 28,000*l.* against the underwriters, which they would probably not pay without seeing the log book, did not ask for it, is to us very extraordinary. That there is not any direct and positive proof that Mr. Kish conspired to cast away this vessel, we readily admit, but the circumstances are in the highest degree suspicious.

As regards Mr. Griffin, all that we need say is, that he no doubt carried out Mr. Kish's orders, whatever those orders were. If they were to prevent as far as he could the getting off of the ship, he no doubt did his best to effect that object. We have no direct evidence that he did so, but at the same time we do not know what else he was there for, nor why he was ever sent there. This however we do know, that his presence was considered to be so injurious to the interest of the underwriters, that they called upon Mr. Kish to recall him, and that was accordingly done.

As regards Mr. Muir himself we hardly know what to say. The work, which he was sent out to perform, was of a character requiring the use of all his faculties; he seems, however, to have led whilst at Corunna a somewhat disorderly life, and to have continued on terms of the closest intimacy with a man, who he says had endeavoured to bribe him to violate the trust which had been reposed in him; and without saying that he is guilty of having neglected his employers' interests by not using his best endeavours to get her off, it must be admitted that there was a long time, during which nothing was done to get this vessel off, from the 23rd of July to the 11th of August, when the gale came on, and during all which time the weather seems to have been favourable for carrying on salvage operations. It may be that no appliances for the purpose could have been obtained at Corunna; still we are disposed to think that, if there had been a little more energy on his part, a little less intimacy with Mr. Griffin, and a little less devotion to the attractions of Corunna society, the result might possibly have been different. We cannot say that we are satisfied with the conduct of any of the parties, but at the same time we are not in a position with the evidence before us to say that the loss of the vessel can be directly attributed to any one but the master.

Lastly, it is said that "the Board of Trade are of opinion that the certificate of the master should be dealt with." As regards this man we have no doubt whatever that he has been guilty, if not of a criminal act, at all events of serious and culpable negligence in having caused this vessel to go ashore on the Pedrido reef. If it had been proved that he had wilfully put her on the rocks, we should without the slightest hesitation have cancelled his certificate; but as it is, we hold him to have been guilty of serious and culpable negligence contributing to the loss of this vessel. His certificate has already been suspended in a previous case for six months, but that does not appear to have produced much effect upon him, and we shall see what a suspension of it for twelve months will do. It is on the whole in our opinion a very lenient sentence, and indeed some of the assessors would have been quite willing to have made the suspension longer.

Mr. Muir Mackenzie has said that this is perhaps one of the most important cases that has ever come before this Court, and I am not prepared to say that it is not so. It will perhaps however be said, as was said in the case of the "Gem" and "Bowfell," that here is a huge inquiry which has lasted some eight days, and which, so far as the owner is concerned, is

practically without any result. I think, however, that that would hardly be a correct statement to make in this case, any more than it was in the case of the "Gem" and "Bowfell." In that case the issues and the result were in the highest degree important; for the question was whether the owners of the Liverpool ferry-boats were to be at liberty to run their boats, no matter what the weather might be, at the imminent risk to the lives of the passengers; and the result has been, whether for good or for evil, that it has caused the prosecution and completion of the Mersey Tunnel, which had till then been hanging fire for twenty years, and which might, but for that decision, have continued to hang fire for another twenty years. So also in the present case, although no one but the master has been punished, and practically the owner seems to have escaped without punishment, the inquiry will probably have this good result, that it will show to underwriters the very heavy risks they run when they insure vessels owned by Mr. Thomas Kish, of Sunderland, and commanded by his brother, Captain John George Kish.

After the judgment had been pronounced, Mr. Muir Mackenzie asked for costs against Mr. Kish, on the ground that he had refused to give any information to the Board of Trade as to the cost and value of the ship, the insurances thereon, and the circumstances under which he had sent Mr. Griffin to Corunna; that he had also, when called as a witness, refused to give the required information, and stated that he had intentionally left all his books and papers relating to this vessel at home, although he had been subpoenaed to produce them, and that it was only after pressure had been brought to bear upon him that he expressed his regret for what he had done, and stated that he would produce them; and that his conduct had compelled the Board of Trade to have Mr. Carr and Mr. Rundell, agents for some of the principal underwriters on the ship, in attendance during the hearing in order to give evidence, in case Mr. Kish should still refuse to give the necessary information. On these grounds Mr. Muir Mackenzie asked that the expenses of Mr. Carr and Mr. Rundell in attending the inquiry, namely 70*l.* 0*s.* 3*d.*, should be allowed against Mr. Kish. Mr. Pollard also, who had appeared for some of the principal underwriters, stated that the inquiry had been much prolonged, and the expenses consequently increased by the conduct pursued by Mr. Kish, and he asked, therefore, that he should be condemned in a portion of the additional expenses occasioned thereby, which he estimated at the sum of fifty pounds. In reply Mr. Ince could only urge that Mr. Kish, not having been found guilty of the offences charged against him, the Court had no power to condemn him in costs. Looking, however, at the terms of the 21st rule, I have no doubt whatever that the Court has full power to condemn Mr. Kish in the whole or a portion of the costs, if it should think fit to do so. It is true that Mr. Kish has not been found guilty of having conspired with his clerk, Mr. Griffin, or with his brother, the captain, to wreck the ship, or to prevent her coming off the Rocks when she had got on them; but he has done his best to prevent a full and fair inquiry into the facts, and he has unduly and improperly prolonged the proceedings—first, by refusing to give any information to the Board of Trade as to insurances on the vessel, a most important factor in this case, and secondly by refusing, when called as a witness, to give evidence on those points, until he was compelled to do so. Mr. Kish is, in my opinion, not entitled to any indulgence from the Court; he has by his conduct added considerably to the costs and expenses of this inquiry, and I think that the application which is made is most reasonable, and more moderate than Mr. Kish had any right to expect. I shall therefore condemn Mr. Kish to pay to the Board of Trade the sum of 70*l.* 0*s.* 3*d.*, in part payment of the expenses of the witnesses whom they were compelled to subpoena, and to the underwriters, for whom Mr. Pollard has appeared, the sum of 50*l.* in part payment of the additional expenses to which they have been put by Mr. Kish's conduct.

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

We concur.

(Signed) WM. PARFITT,
J. H. HALLETT,
H. C. KENNEDY,
J. MORESBY, } Assessors.