THE MERCHANT SHIPPING ACT, 1894

REPORT OF COURT

(No. 7996)

s.s. "Corchester" O.N. 149801
and s.s. "City of Sydney" O.N. 161144

In the matter of a Formal Investigation held at Church House, Westminster, London, S.W.1, on the 11th, 12th and 13th days of July, 1956, before Mr. R. F. Hayward, M.C., Q.C., assisted by Captain Lewis Parfitt, D.S.C. and Captain A. M. Atkinson into the circumstances attending the collision between the s.s. "Corchester" and the s.s. "City of Sydney" with the consequent loss of the s.s. "Corchester" with 8 lives.

The Court having carefully inquired into the circumstances attending the above-mentioned shipping casualty, finds for the reasons stated in the Annex hereto, that the Master's Certificate of Captain William Reginald Pinchbeck and the Mate's Home Trade Certificate of John Sidney Burrage be suspended for 12 months from the date of the collision. It further recommends that the Master's Certificate of Captain Ernest George Northcott be suspended for 3 months from the date of the collision.

Dated this 17th day of July, 1956.

R. F. HAYWARD, *Judge.*

We concur in the above Report.

LEWIS PARFITT
A. M. ATKINSON } *Assessors.*

QUESTIONS AND ANSWERS

Q. 1. By whom was the "Corchester" owned and operated at the time of the collision with the "City of Sydney" and who was the designated manager?

A. Messrs. William Cory & Company Limited, London.
Mr. James Kirkpatrick Black.

Q. 2. By whom was the "City of Sydney" owned and operated at the time of the collision with the "Corchester" and who was the designated manager?

A. Messrs. Ellerman Lines Limited, London.
Mr. Stanley Morton Shaw.

Q. 3. When, where and by whom was the "Corchester" built?

A. 1927, Sunderland, S. P. Austin & Son Limited.

Q. 4. When, where and by whom was the "City of Sydney" built?

A. 1929, Belfast, Messrs. Workman Clark (1928) Limited.

Q. 5. (*a*) With what compasses was the "Corchester" fitted?

A. Standard compass on bridge, steering compass in wheelhouse.

(*b*) When were they last adjusted previous to the collision?

A. 11th May, 1955.

Q. 6. (*a*) With what compasses was the "City of Sydney" fitted?

A. Standard compass on compass platform, steering compass in wheelhouse.

(*b*) When were they last adjusted previous to the collision?

A. 6th October, 1954.

Q. 7. What navigational aids were provided on board the "Corchester"?

A. Radar, Decca type 12, Decca navigator, Mark IV, echo-sounding device, subsig. type 633, leads and lines and patent log.

Q. 8. What navigational aids were provided on board the "City of Sydney"?

A. Radar, Admiralty 268, Direction Finder, Marconi Lodestone, Echometer Marconi Seagraph, Kelvin Patent sounding machine, leads and lines and patent log.

Q. 9. Did the "Corchester" leave Erith for West Hartlepool about 1515 hours on 18th February, 1956?

A. Yes.

Q. 10. Did the "City of Sydney" leave Middlesbrough for Newport in Monmouth about 1822 hours on 18th February, 1956?

A. Yes.

Q. 11. Was the "Corchester" under the command of the master Ernest George Northcott and did she carry a crew of 21 persons all told?

A. Yes.

Q. 12. Was the "City of Sydney" under the command of the master William Reginald Pinchbeck and did she carry a crew of 77 persons all told including a pilot?

A. Yes.

Q. 13. Was the "Corchester" in a good and seaworthy condition at the commencement of her voyage from Erith?

A. Yes.

Q. 14. Was the "City of Sydney" in a good and seaworthy condition at the commencement of her voyage from Middlesbrough?

A. Yes.

Q. 15. Did a collision between the "Corchester" and the "City of Sydney" take place during the morning of the 19th February, 1956?

A. Yes.

Q. 16. What was the time and place of the collision?

A. At about 0721 hours, about 2 miles to the southward of the Haisborough light vessel.

Q. 17. What was the state of the weather, wind and sea at this time?

A. Passing snow showers with poor to very poor visibility; moderate to fresh N.E. breeze with moderate sea and swell.

Q. 18. What was the state and force of the tide?

A. About 4 hours ebb; about 1¼ knots.

Q. 19. Was the "City of Sydney" located by the "Corchester" by radar before the "City of Sydney" was sighted?

A. Yes.

Q. 20. (*a*) If so, at what time did this occur?

A. Not stated, but if the distance was about 5 miles, as stated, the time would be about 0706 hours.

(*b*) What were the courses and speeds of the two ships at this time?

A. "Corchester": N.W. by N. magnetic, about 8 knots; "City of Sydney": 132 degrees about 12 knots.

(*c*) Were these speeds proper in the prevailing weather conditions?

A. No.

(*d*) What distances and bearings of the "City of Sydney" were obtained by the radar of the "Corchester" and when?

A. The second officer stated the distances obtained by radar as (i) about 5 miles; (ii) about 3 miles; (iii) about 1¼ miles; (iv) a mile. He stated the bearings respectively to the distances were (i) about 1½ to 2 points; (ii) about 2 points; (iii) about a point, maybe a little over; (iv) about a point. The Court is of opinion that the bearing of the "City of Sydney" was about a point to port of his course and was so maintained.

Q. 21. Was the "Corchester" located by the "City of Sydney" by radar before the "Corchester" was sighted?

A. Yes.

Q. 22. (*a*) If so, at what time did this occur?

A. Probably at about 0714 hours.

(*b*) What were the courses and speeds of the two ships at this time?

A. As in 20(*b*)

(*c*) Were these speeds proper in the prevailing weather conditions?

A. No.

(*d*) What distances and bearings of the "Corchester" were obtained by the radar of the "City of Sydney" and when?

A. As to distances (i) about 2¼ miles; (ii) about 1¾ miles; (iii) about a mile. The bearings stated to have been obtained at these distances were: (i) 4 degrees on the starboard bow; (ii) just before it was ahead; (iii) ahead. The Court is of opinion that the first bearing was probably not more than about 2 degrees to starboard of her course and so maintained.

Q. 23. (*a*) What lights were being exhibited by the "Corchester"?

A. 2 masthead lights and sidelights.

(*b*) Were these lights in good working order?

A. Yes.

Q. 24. (*a*) What lights were being exhibited by the "City of Sydney"?

A. 2 masthead lights and sidelights.

(*b*) Were these lights in good working order?

A. Yes.

Q. 25. (*a*) What fog signals were being made by both ships?

A. The "Corchester" was not sounding fog signals.

The "City of Sydney" was sounding prolonged blasts at short intervals.

(*b*) What fog signals were heard by each ship from the other ship?

A. None.

Q. 26. What was the distance, bearing and approximate heading of the "City of Sydney" when she was first seen by the "Corchester"?

A. A quarter of a mile or a little more, about $\frac{3}{4}$ point on the port bow, and the "City of Sydney" was thought to be heading with her starboard side showing and her masts well open.

Q. 27. (*a*) What were the courses and speeds of the two ships at this time?

A. The "Corchester" was steering N.W. by N., about 8 knots; the "City of Sydney" was steering 132 degrees, about 12 knots.

(*b*) Were these speeds proper in the prevailing weather conditions?

A. No.

Q. 28. What was the distance, bearing and approximate heading of the "Corchester" when she was first seen by the "City of Sydney"?

A. About a quarter of a mile or a little more, bearing nearly ahead and heading about a point to port of the "City of Sydney's" intended track.

Q. 29. (*a*) What were the courses and speeds of the two ships at this time?

A. As stated in answer to 27(*a*).

(*b*) Were these speeds proper in the prevailing weather conditions?

A. No.

Q. 30. (*a*) Were alterations of course or speed made by the two ships after locating each other on radar and before sighting each other?

A. No.

(*b*) If not, should any such alterations have been made?

A. Yes. Speed should have been drastically reduced by both ships.

(*c*) If so, were such alterations proper?

A. Inapplicable.

Q. 31. What lights of the "City of Sydney" were first seen by the "Corchester"?

A. None were noticed.

Q. 32. What lights of the "Corchester" were first seen by the "City of Sydney"?

A. Port sidelight and the forward masthead light.

Q. 33. Did any lights of the "City of Sydney" other than those first seen come into view of the "Corchester" before the collision?

A. None were noticed.

Q. 34. Did any lights of the "Corchester" other than those first seen come into view of the "City of Sydney" before the collision?

A. The main masthead light and her green light.

Q. 35. (*a*) What measures were taken on board the "Corchester" and when to avoid the collision with the "City of Sydney"?

A. According to the helmsman the orders were port, starboard, and hard aport. Two short blasts were sounded and the engines were put full astern on sighting.

(*b*) Were these proper measures?

A. Had these measures been taken in ample time, the porting would not have been improper.

Q. 36. (*a*) What measures were taken on board the "City of Sydney" and when to avoid the collision with the "Corchester"?

A. On sighting the "Corchester" and hearing what she interpreted as either a short blast or a fog blast, she went hard astarboard and full speed astern and sounded one short blast followed by three short blasts and repeated them.

(*b*) Were these proper measures?

A. Had these measures been taken in ample time, they would not have been improper.

Q. 37. What manoeuvring signals were given by the "Corchester" and when?

A. Two short blasts when she ported.

Q. 38. What manoeuvring signals were given by the "City of Sydney" and when?

A. One short blast followed by three short blasts when she starboarded.

Q. 39. What signals were heard by the "Corchester" from the "City of Sydney" and when?

A. None.

Q. 40. What signals were heard by the "City of Sydney" from the "Corchester" and when?

A. A single signal heard from the "Corchester" was interpreted as a short blast or a fog blast at about the time the "Corchester" came into sight.

Q. 41. What parts of the "Corchester" and the "City of Sydney" first came into contact and what was the approximate angle between the two ships at the moment of contact?

A. The starboard bow of the "Corchester" and the stem of the "City of Sydney" at an angle of about 60 degrees.

Q. 42. What was the heading of the "Corchester" at the time of the collision?

A. Unknown.

Q. 43. What was the heading of the "City of Sydney" at the time of the collision?

A. Unknown.

Q. 44. (*a*) What officer had the watch at the material time in the "Corchester"?

A. The second officer, Mr. John Sidney Burrage.

(*b*) Who was on watch with him?

A. Only the helmsman.

Q. 45. (*a*) Who was in charge of the navigation of the "City of Sydney" at the material time?

A. The master, Captain William Reginald Pinchbeck, D.S.C.

(*b*) Who was on watch with him?

A. The chief officer, the pilot, a cadet, the helmsman, and a bridge-boy.

Q. 46. Was a proper lookout being kept on board the "Corchester" before the collision?

A. No, there should have been a lookout posted forward, and the second officer should have had at least some assistance on the bridge other than the helmsman.

Q. 47. Was a proper lookout being kept on board the "City of Sydney" before the collision?

A. No, there should have been a lookout posted forward.

Q. 48. Was the collision caused or contributed to by the wrongful act or default of any person or persons on board the "Corchester"?

A. Yes.

Q. 49. Was the collision caused or contributed to by the wrongful act or default of any person or persons on board the "City of Sydney"?

A. Yes.

Q. 50. Were the life-saving appliances carried on board the "Corchester" adequate and well maintained?

A. Yes.

Q. 51. Were the life-saving appliances carried on board the "City of Sydney" adequate and well maintained?

A. Yes.

Q. 52. After the collision were all proper steps taken by the master of the "Corchester" for the preservation of his ship and crew?

A. Yes.

Q. 53. What attempt was made on the "Corchester" to use their lifeboats and with what result?

A. The jolly boat was lowered but not used. The port lifeboat was lowered, whereby 13 members of the crew were saved.

Q. 54. What steps were taken by the master of the "City of Sydney" to save the crew of the "Corchester"?

A. He sent out radio message, and sent his motor boat to pick up survivors and search the area for some time.

Q. 55. How many lives were lost and saved respectively and under what circumstances?

A. The chief steward was found in the water and picked up, but did not respond to artificial respiration. The second engineer failed to take the opportunities to abandon ship and was lost. Six members of the watch below were trapped in the fore part of the ship which fell off and sank almost immediately after the collision.

ANNEX TO THE REPORT

On the 19th February, 1956, the s.s. "Corchester" and the s.s. "City of Sydney" collided with the result that the "Corchester" sank and 8 lives were lost from the "Corchester". This ship, a single-screw steam collier of 2,374 tons, gross, 285 feet in length and in ballast trim of 7 feet 6 inches forward and 13 feet aft, had left the Thames for West Hartlepool with a crew of 21 hands. She had experienced varying degrees of low visibility and, shortly before 0700 hours, her master, having inquired if the watch keeper, the second officer, Mr. Burrage, felt all right, on receiving an affirmative answer went below. Whilst the ship was proceeding up the Wold on a course of N.W. by N. magnetic at full speed, the second officer, who had a man at the wheel, with the other two men on watch, one down somewhere forward and the other one said to be in his bunk aft, found the visibility was decreasing. The wind was north-easterly force 4 to 5, with a moderate sea and some swell.

At about 0715 hours he got an echo on his radar screen of a ship which proved to be the "City of Sydney" distant about 5 miles and bearing a point or a little more on his port bow. He retained his full speed, and, after going on to the bridge again and seeing nothing, obtained another echo on the radar screen of the same ship, distant about 3 miles and on about the same bearing. Again failing to see it visually, he blew down the voice-pipe for the master and, receiving no reply, again observed on the radar screen the on-coming vessel at about a distance of 1¼ miles. Still maintaining his speed and failing to sound any fog signal, he blew down the voice-pipe again for the master. There was no reply. Going on to the bridge, he met the assistant steward, who was bringing up tea, and sent him to call the master. He afterwards got a further echo of the "City of Sydney" distant about a mile, and finally one at just under a mile. Returning to the bridge, he saw the ship at an estimated distance of a quarter of a mile bearing nearly ahead and seeing her starboard side with, as he thought, her masts fairly well open. He immediately gave the order "Port" and gave two short blasts. Then, according to the helmsman, he gave the order "Starboard". The helmsman, taking off some port wheel, then got the order "Hard aport". The ship began to fall off to port and he then saw the "City of Sydney" begin to swing to starboard. He rang the engineroom telegraph "Full astern", and at about this time the master arrived on the bridge having been alarmed by his ship's two short blasts. Almost immediately the collision happened, the "City of Sydney" striking the "Corchester" on her starboard bow at an angle leading aft of approximately 60 degrees and cutting her bow nearly completely off, and it fell off and sank, trapping the six men in the forecastle.

The order to abandon ship was given. The jolly boat was put into the water and the port lifeboat was

put overboard. 13 of the remaining 15 men of her crew got into it. The ship's steward was seen in the water and he was picked up, but failed to respond to artificial respiration and died. The second engineer failed to comply with the order to abandon ship and was seen standing on the deck. In response to orders from the lifeboat to jump into the water, he merely repeated "I cannot swim", and on the vessel sinking he was drowned.

The "City of Sydney", a steel screw cargo ship of 7,003 tons gross, 454 feet in length, had left the Tees at about 1822 hours on the 18th February for Newport, Monmouthshire, drawing 10 feet 6 inches forward and 19 feet 4 inches aft, carrying a crew of 77 hands and a sea pilot. Having met snow flurries that evening and on the morning of the 19th February at about 0600 hours the ship was off the Haisborough when visibility lessened to perhaps a mile. The engines were rung to standby and the whistle was sounding fog signals at frequent intervals. At this time, the master was on the bridge and standing near him was the North Sea pilot. The chief officer was put on radar watch, and there was also on the bridge a helmsman, a cadet, who was entering the Movement Book and assisting the mate, and a bridge boy. A lookout had left monkey island at 0600 hours and had not been relieved.

When off the Haisborough on a course of 132 degrees, the mate reported a radar echo at about 2¼ miles bearing about 4 degrees on the starboard bow. The Court is not satisfied that at this time the ship was exactly on her course, and it is of opinion that the bearing was more like 2 degrees. Speed was maintained and the pilot continued to sound fog blasts at short intervals. The next report by the chief officer to the master of his radar observations was that the on-coming ship, which proved to be the "Corchester", was 1¾ miles distant and bearing nearly ahead. Again there was no definite evidence that the ship was exactly on her course at this time. Speed was maintained. The chief officer shortly afterwards reported that he was losing the echo in the clutter ahead at a distance of about a mile. Speed was still maintained. The "Corchester", showing her red sidelight and the forward masthead light, was observed at a distance of about a quarter of a mile, or perhaps a little more, about ahead and at about the same time was heard to blow what was described as an indeterminate signal, namely one which might have been a single short blast or a single long fog blast. Thereupon the helm of the "City of Sydney" was ordered hard astarboard, one short blast followed by 3 short blasts were blown on her whistle and repeated and her engines were put full speed astern. She altered her heading to starboard, but the collision happened as already described.

After the collision, the "City of Sydney" and her master and crew took all reasonable steps to assist the "Corchester" in saving life.

The Court cannot condemn too strongly the maintaining of full speed in bad visibility and again it emphasises what has already been emphasised on several occasions, namely that the radar must be used as an aid to navigation and that its presence and use does not justify any breach of the Collision Regulations. In this case, however, on both ships, had the indications of the radar been acted upon, the proper manoeuvre would have been drastically to reduce speed. This, as always, would have given more time to exchange signals, more time in which to locate the other vessel, more time on sighting to take appropriate manoeuvres and almost always far less damage to property and even to life.

The Court is of opinion that the second officer of the "Corchester" should not have been left without any assistance in the matter of radar observation, of keeping lookout, of sounding necessary fog signals and of seeing that the course was maintained. There should have been a lookout posted on the forecastle and there should have been a man readily available to send for the master. This master had gone below at about 0700 hours, whilst the visibility, though low, was sufficient. Unfortunately, he remained below and not in touch with the voice-pipe in his cabin and although the second officer, at a late moment, blew down that voice-pipe on two occasions and finally sent the steward, who had appeared on the bridge with tea, the master's first information of anything unusual was the hearing of his ship's helm signal; whereupon he came on the bridge, arriving just before the collision.

The evidence gave the impression that the discipline maintained on the "Corchester" was lax and that her master ought to have seen that so long as he was below there was somebody who could be instantly sent for him, and in the uncertain visibility due to passing snow showers, the master should have been more on the alert. In spite of the submissions of the Ministry of Transport and Civil Aviation, the Court finds itself unable to merely censure the master for his indirect contribution to this casualty, and orders that his Certificate be suspended for three months from the date of the collision.

With regard to the second mate of the "Corchester", he was sadly in fault for maintaining speed without even ringing standby and for failing to sound his fog signals. The failure of this officer with regard to speed was all the more blameworthy to the extent of recklessness that in spite of the warning which he had from the radar echoes he still maintained his speed, when his ship was quickly getting nearer to a vessel remaining on about the same bearing. The Court accordingly suspends Mr. Burrage's Home Trade Mate's Certificate for a period of 12 months from the date of the accident.

On the "City of Sydney", though the only fault of the master would appear to be the maintenance of the high speed in spite of repeated warnings, the Court recommends that his Certificate be suspended for 12 months from the date of the accident, it being so vitally important that Articles 15 and 16 of the Collision Regulations be complied with, especially in this case, where the indications from the radar were so alarming.

The pilot, who was on her bridge, was a witness to the weather conditions, the excessive speed of his ship and the radar warnings, and the Court is strongly of the opinion that in the circumstances he should have advised the master to reduce his speed on the advent of the snow shower, and on the further radar report that the vessel was only about a mile distant and on a nearly constant bearing he should have pressed the master to take off his speed. The pilot was not a party to the proceedings and it was suggested that his conduct was the subject of inquiry by his Pilotage Authority. The Court

recommends that the Ministry of Transport and Civil Aviation supply that Authority with the evidence in this Inquiry.

Finally, the Court desires to impress on all navigating officers the great importance of complying closely with the Regulations for fog, Articles 15 and 16 in the International Collision Regulations, in spite of the fact that their ships may be fitted with radar, which has again and again been held should be used as an aid and only as an aid to navigation.

The Court would add that it would be an advantage if the P.P.I's. of radars could be so located that on raising their eyes from them, observers could immediately get a visual lookout forward of the beam.

R. F. HAYWARD, *Judge*

LEWIS PARFITT
A. M. ATKINSON } *Assessors*

(No. 7996a)

IN THE HIGH COURT OF JUSTICE.
PROBATE, DIVORCE AND ADMIRALTY DIVISION.
(ADMIRALTY).
DIVISIONAL COURT.

Royal Courts of Justice.
Friday, 16th November, 1956

Before:

The Rt. Hon. THE PRESIDENT
(LORD MERRIMAN)
and
MR. JUSTICE WILLMER.

Assisted by:

Commodore R. L. F. HUBBARD, R.D., R.N.R.
Captain R. J. GALPIN, R.D. R.N.R.
(Trinity Masters).

IN THE MATTER OF THE MERCHANT SHIPPING ACTS 1894-1948
and
IN THE MATTER OF A FORMAL INVESTIGATION HELD AT CHURCH HOUSE, WESTMINSTER, LONDON, S.W.1, ON THE 11th, 12th, 13th AND 17th DAYS OF JULY, 1956, BEFORE MR. R. F. HAYWARD, M.C., Q.C., ASSISTED BY CAPTAIN LEWIS PARFITT, D.S.C., AND CAPTAIN A. M. ATKINSON INTO THE CIRCUMSTANCES ATTENDING THE COLLISION BETWEEN THE s.s. "CORCHESTER" AND THE s.s. "CITY OF SYDNEY" ON THE 19th FEBRUARY, 1956, WHICH RESULTED IN THE LOSS OF THE s.s. "CORCHESTER" AND 8 LIVES.

MR. H. V. BRANDON (instructed by Messrs. Ingledew, Brown, Bennison and Garrett), appeared on behalf of Captain E. G. Northcott, Master of s.s. "CORCHESTER".

MR. J. V. NAISBY, Q.C. and **MR. G. N. W. BOYES** (instructed by The Treasury Solicitor) appeared on behalf of the Ministry of Transport and Civil Aviation.

JUDGMENT

THE PRESIDENT: The Judgment which Mr. Justice Willmer will read is the Judgment of the Court.

MR. JUSTICE WILLMER: This is an Appeal by Captain Ernest George Northcott, the Master of the Steamship "Corchester", against the decision of a Court of Formal Investigation, constituted under Section 466 of the Merchant Shipping Act, 1894, to inquire into the circumstances attending a collision between the "Corchester" and the steamship "City of Sydney", which occurred in the vicinity of the Haisborough Light Vessel in the early morning of the 19th February, 1956. In consequence of the collision the "Corchester" sank, with the loss of 8 lives. The Court, which consisted of a Commissioner assisted by two Assessors, found—according to the Report embodied in the Record before us—that the collision was caused by the fault or default of those in charge of both ships, and suspended the Master's certificate of the Master of the "City of Sydney" and the Mate's Home Trade certificate of the Second Officer of the "Corchester" for a period of 12 months. The Court also suspended the Appellant's Master's certificate for a period of 3 months.

This appeal concerns only the suspension of the Appellant's certificate. There has been no appeal by the Master of the "City of Sydney", nor by the Second Officer of the "Corchester", who were respectively the Officers in charge of the navigation of the two ships at the material time. During the material period preceding the collision the Appellant was not on the bridge of his ship, having gone below for the purpose of relieving himself and having tea some 25 minutes before the collision. He only returned to the bridge a few seconds before the collision. The Appellant, therefore, had no part in the navigation of his ship during the material time, having left the Second Officer in sole charge. In these circumstances it does not appear necessary to describe in detail the manoeuvres of the two ships which led to the collision, and the following summary will suffice.

The "Corchester" was proceeding in a north westerly direction, in the course of a voyage from Erith to West Hartlepool in ballast. The "City of Sydney" was proceeding in a south-easterly direction, in the course of a voyage from Middlesbrough to Newport, also in ballast. The visibility on the morning of the collision was variable, due to intermittent snow flurries. At the time when the Appellant left the bridge of his ship to go below it was relatively clear, but at the time of the collision the visibility had closed in, due to snow, and was no more than about a quarter of a mile. In spite of the poor visibility both vessels were proceeding at full speed until after they sighted each other. Both were equipped with Radar, and in each case the echo of the other was observed when the ships were still a considerable distance apart. The Second Officer of the "Corchester" observed that the echo of the "City of Sydney" remained on a constant bearing; but he took no steps to alter either the course or speed of his ship. He did not sound any fog signals, and heard none from the "City of Sydney", though the latter was found by the Court to be sounding. After

the echo of the "City of Sydney" had been observed to approach nearer, the Second Officer of the "Corchester" twice endeavoured by means of the voice pipe to summon the Appellant to the bridge; but he obtained no reply, because the voice-pipe connected only with the Master's cabin, whereas the Appellant was in the Saloon. At the last moment—just before the vessels sighted each other—he sent the Steward, who had appeared on the bridge with tea, to find the Appellant. After the vessels sighted each other the "Corchester" turned to port under port wheel, and sounded two short blasts; the "City of Sydney" turned to starboard under starboard wheel. Both vessels worked their engines full speed astern, but the collision nevertheless happened, the "City of Sydney" with her stem striking the starboard bow of the "Corchester" with considerable force at a broad angle. The first that the Appellant knew of any trouble was when he heard the signal of 2 short blasts sounded by his vessel. Upon hearing this he rushed up on the bridge, and arrived just as the collision was about to take place.

The deck watch on board the "Corchester" consisted of the Officer of the Watch (in this case the Second Officer) and 3 men. Of these 3 men one was at the wheel; one was supposed to be on the look-out on the forecastle-head, and was so thought by the Appellant to be, but apparently unknown to the Appellant he had gone off watch at daybreak; the third man was the stand-by man, but he was not on the bridge, and was thought to be in the galley. At the material time, therefore, the Second Officer and the helmsman were the only persons on deck.

The material portion of the Annex to the Report which deals with the Appellant's conduct is in the following terms: " The Court is of the opinion that the Second Officer of the 'Corchester' should not have been left without any assistance in the matter of radar observation, of keeping lookout, of sounding any necessary fog signals and of seeing that the course was maintained. There should have been a lookout posted on the forecastle and there should have been a man readily available to send for the Master. The Master had gone below at about 0700 hours, whilst the visibility, though low, was sufficient. Unfortunately, he remained below and not in touch with the voice-pipe in his cabin and although the Second Officer, at a late moment, blew down that voice-pipe on two occasions and finally sent the steward, who had appeared on the bridge with tea, the Master's first information of anything unusual was the hearing of his ship's helm signal; whereupon he came on the bridge, arriving just before the collision. The evidence gave the impression that the discipline maintained on the "Corchester" was lax and that her Master ought to have seen that so long as he was below there was somebody who could be instantly sent for him and in the uncertain visibility due to passing snow showers, the Master should have been more on the alert. In spite of the submissions of the Ministry of Transport and Civil Aviation the Court finds itself unable merely to censure the Master for his indirect contribution to this casualty, and suspends his Certificate for three months from the date of the collision".

When the appeal was opened before us our attention was immediately drawn to what, in our judgment, can only be described as a grave irregularity on the part of the Commissioner in the preparation and publication of the Report. Section 470 (2) of the Act provides: "(2) Where any case before any such court as aforesaid involves a question as to the cancelling or suspending of a certificate, that court shall, at the conclusion of the case or as soon afterwards as possible, state in open court the decision to which they have come with respect to the cancelling or suspending thereof".

Following the usual practice, the Commissioner complied with this requirement by reading out in open Court the whole of the Report, the Questions and Answers, and the Annex to the Report. We were informed, however, that the Report and the Annex, as originally drafted and as read out in Court, differed in material respects from the Report and Annex as they are now before us, and as they were in due course published by Her Majesty's Stationery Office. In particular, the Report, as read out, contained no finding that the collision was caused by the fault or default of those in charge of both ships. Moreover, the last sentence of the Report —which deals with the certificate of the Appellant— was in the following terms: "It (the Court) further recommends that the Master's certificate of Captain Ernest George Northcott be suspended for three months from the date of the collision".

In this respect there was a discrepancy between the Report, as read out, and the Annex, which in this respect was in the same terms as are now before us, and which stated that the Court suspended the Appellant's certificate for three months. There were other discrepancies, not material to this appeal, between the Report and the Annex as they were read out and as they now appear.

By Section 470 (1) (a) of the Act a Court holding a formal investigation into a shipping casualty is empowered, "if the Court find that the loss . . . . of any ship . . . . has been caused by his wrongful act or default", to cancel or suspend the certificate of a Master. No provision is made for the Court making any recommendation for the cancellation or suspension of a certificate, and no machinery is provided enabling the Ministry or any other authority to act upon any such recommendation.

Upon the Report being sent to the Ministry by the Commissioner, as required by Section 470 (3) of the Act, the Treasury Solicitor's representative having conduct of the case immediately conceived a doubt as to the validity of the Report, so far as it concerned the Appellant, having regard to the fact that it contained no operative order for the suspension of the certificate, but merely a recommendation on which the Ministry was powerless to act. He, therefore, called upon the Commissioner privately and pointed out the difficulty. After discussion the Commissioner decided to meet the difficulty by amending the terms of the Report. This he proceeded to do, making various alterations to the wording of both the Report and the Annex, including the two material alterations to the Report itself, to which reference has already been made. He then caused the whole to be re-typed and re-signed by himself and the two assessors, and forwarded the new and amended Report to the Ministry. This latter is the document which was subsequently published by the Ministry and is contained in the Record before us. Correspondence which passed between the Commissioner and the Treasury Solicitor's representative

has been placed before us, and from this it appears that the Commissioner took the view that he was fully entitled to alter the wording of the Report so as to clear up a possible ambiguity. It remains to add that the interview between the Commissioner and the Treasury Solicitor's representative took place, and the alterations to the Report and Annex were made, without notice to, and without the knowledge of, the Appellant or his legal advisers, and before notice of appeal was given. It is true that after notice of appeal was given it occurred to the representative of the Treasury Solicitor, as is shown by his letter of the 9th August, to doubt the propriety of making any alteration at that stage. We think that the propriety was equally open to doubt at the earlier stage, but the fact that notice of appeal had been given did at least afford an opportunity, which was not taken, of bringing the matter to the notice of the Appellant.

It is to be observed that, as regards the Master of the "City of Sydney", whose certificate was suspended for 12 months from the date of the collision on the face of the Report itself, the Annex as read in Court reads: "The Court recommends that his certificate be suspended for 12 months from the date of the accident", which has been altered in the Record before us to read "suspends" instead of "recommends". We find ourselves unable to accept the view expressed in the letter of the 25th July from the Commissioner to one of the Assessors that any of these alterations can be described by any stretch of language as either "minor corrections" or "slight alterations".

Upon these facts being brought to our attention we thought it right to grant leave to amend the Notice of Appeal, so as to raise the question whether there ever was a valid order suspending the Appellant's certificate. It was argued on the one side that the decision, and the only decision, of the Court in relation to the Appellant was that contained in the concluding sentence of the Report; that, since this contained no valid order for the suspension of the Appellant's certificate, it was of no effect; and that the Commissioner, having stated the decision in open Court, and having once submitted his Report to the Ministry, was *functus officio* and had no jurisdiction to amend its terms, and certainly not behind the back of, and without notice to, the Appellant. On behalf of the Ministry it was contended that the decision of the Court was to be collected, not from the Report alone, but from the Report and the Annex together, both of which were read in full in open Court; that, upon a fair reading of the two documents taken together, it was the plain intention of the Court to suspend the Appellant's certificate; and that in these circumstances the Commissioner was not acting outside his powers in altering the wording of the Report and Annex, so as to make plain what had always been the intention of the Court.

It should be made plain at once that no lack of *bona fides*, on the part of either the Commissioner or the Treasury Solicitor's representative, has been suggested. At the same time we are abundantly satisfied that the action of the Commissioner in altering the wording of the Report, after the decision had been stated in open Court, was improper and without jurisdiction. We do not accept the contention that, even in its original form, the Report, when read in conjunction with the Annex, showed a manifest intention on the part of the Court to order the suspension of the Appellant's certificate. On the contrary, we think the true inference is that the Commissioner made a mistake of law, in that when preparing the original report he had not in mind what were the exact duties and powers of the Court, as defined by Section 470 (1) (a) of the Act, in relation to suspension of a certificate. So far as the High Court is concerned, the power to amend the wording of an order once made, whether under Order 28, rule 11, or under the inherent jurisdiction of the Court, is strictly limited. The principles on which the High Court acts are stated in the Annual Practice, in the notes to Order 28, rule 11, at page 465 of the 1956 Edition, in words which were expressly approved by Lord Justice Greer, in *MacCarthy v. Agard*, (1933) 2 King's Bench 417, at p. 424, as follows: "The 'error or omission' must be an error in expressing the manifest intention of the Court; the Court cannot correct a mistake of its own in law or otherwise, even though apparent on the face of the order, such as a mistake due to a misunderstanding of a rule or statute. If the order as drawn correctly expressed the intention, it cannot be corrected under this rule or the inherent jurisdiction, even if the decision of the Court is procured by fraud or misrepresentation." Similarly the power of an arbitrator to alter the wording of an award once published is limited to the correction of an accidental slip or omission—see Section 17 of the Arbitration Act, 1950. The case of *Sutherland v. Hannevig*, (1921) 1 King's Bench p. 336, furnishes a good illustration of what an arbitrator has no jurisdiction to do.

In this case, however, we are dealing with the decision of a tribunal whose jurisdiction is wholly statutory, and unless what the Commissioner did can be shown to be within the four walls of the Statute he could have no jurisdiction. It is true, as has been pointed out to us, that a Court holding a formal investigation under the Merchant Shipping Act, 1894, is given, by Section 466 (10), all the powers of a Court of Summary Jurisdiction. It is further true that a Court of Summary Jurisdiction has the power to correct an accidental slip or omission in any order made by it—see *Cooper v. Cooper*, (1940) Probate 204, at p. 213. But it has not been, and could not be, suggested that its powers extend beyond that. What, in our judgment, it is vital to observe is that, in the case of a Court holding a formal investigation, the procedure for announcing the decision and submitting the Report is expressly laid down by the provisions of the enabling Statute. Attention has already been drawn to the words of Section 470 (2), which provide that in case of suspension of a certificate the decision must be stated in open Court; but it is not unimportant to bear in mind also the provisions of sub-section (3), which provides for the sending to the Ministry of a full Report on the case. No provision is made for submitting an amended or corrected report to the Ministry; and no decision to suspend or cancel a certificate is valid, unless stated in open Court. The Report in its present amended form has never been read in open Court, and the only decision stated in open Court was that contained in the Report in its original form.

This alone, in our judgment, is sufficient to justify the conclusion that the Report in its present amended form, as far as it concerns the Appellant, must be totally disregarded. If there is any room for doubt,

we think that such doubt is removed when it is remembered that the alterations to the original report were made behind the back of, and without notice to, the Appellant or his advisers. In *Inland Revenue Commissioners v. Hunter*, (1914) 3 King's Bench 423, Mr. Justice Scrutton said, at p. 428: "I think it right to say that the well known rule that no communication should be made by one party to a judicial tribunal without the knowledge of the other party is of the greatest importance, and should be strictly observed. This is especially so where the communication leads to the alteration of an existing award, and is made orally, so that no record of what it was exists. While, as I have said, no improper motive is imputed to the subject's solicitors, I think their action was a breach of a well established rule of great importance, and, as such, most regrettable". The principle there stated applies with full force to what was done in the present case. The failure to give notice to the Appellant's advisers was all the more regrettable, having regard to the fact that, as appears from the letter from the Treasury Solicitor's representative to the Commissioner of the 8th August, 1956, it was known before the amended Report was published that this appeal had been lodged.

For these reasons we are satisfied that the Report in its present amended form must be totally disregarded, and this appeal must be treated as an appeal from the decision contained in the original report, as read in open Court, and as originally submitted to the Ministry. The question then arises whether, in view of the terms of that Report, there ever has been any valid suspension of the Appellant's certificate. The Report, which is in the statutory form provided by the Shipping Casualties and Appeals and Re-hearings Rules, Appendix I, No. 3, purports to set out the findings and decision of the Court. It is true that the form provides that the Report shall be accompanied by an Annex, but it is plain from the introductory wording of the printed form of the Report that the primary purpose of the Annex is to set out in detail the reasons for the findings. In saying this we are not losing sight of the fact that the instructions on the form require it to be stated in the Annex, *inter alia*, whether the certificate of any officer is suspended, and if so for what reasons. This does not, however, in our judgment, militate against the view that the Report itself is intended to be the governing document. The Commissioner, having read the Report in open Court, sufficiently discharged the duty laid upon him by Section 470 (2) of the Act of stating the decision to which the Court had come. Although it is customarily done, there was no obligation on his part to read the whole of the Annex in open Court. In such circumstances we do not see how anything said in the Annex can be relied on for the purpose of contradicting the plain words of the Report itself. This view is, we think, confirmed by the decision in *The "Kestrel"* (1881), 6 Probate Division p. 182. The Report in that case set out, in an exemplary way, a precise statement of the wrongful acts and defaults found against the Master, on the strength of which his certificate was suspended. It was complained, however, that the reasons for the decision, as contained in the Annex to the Report which was subsequently published, differed from those which had been stated verbally in Court at the time when the decision was announced and the Report read. It was held that this circumstance was immaterial, since the Court was at liberty, when submitting the Report and Annex to the Ministry, to give different reasons for its decision from those which had been announced in Court.

If we are wrong in our view that the Report itself is the governing document, and must be taken to override any contrary expressions contained in the Annex, and if it be right that the Report and Annex must be read together in order to ascertain the decision of the Court, the only result is that the decision is ambiguous. We should not in any event think it right that an officer should receive the punishment of having his certificate suspended on the strength of an ambiguity. It is to be remembered that a Court holding a formal investigation is exercising a quasi-penal jurisdiction, and for that reason, if for no other, is under a duty to state its decision in the clearest possible terms. It follows, therefore, that whether the Report is read by itself, or whether it is read in conjunction with the Annex, we are unable to find that there has ever been any valid order suspending the Appellant's certificate. On that ground alone the Appellant is entitled to succeed on this Appeal.

Apart from this, however, it has been further argued that, even if the Report be read as containing any clear decision to suspend the Appellant's certificate, such decision is vitiated by the absence of any clear finding that the loss of the "Corchester" was caused by any wrongful act or default on the part of the Appellant. It is contended that by the clear words of Section 470 (1) (a) of the Act it is only upon such a finding that a Court holding a formal investigation has jurisdiction to suspend a certificate. It is not without interest to observe that the Report, as originally worded, contained no express finding of wrongful act or default on the part of anybody. When, however, the Report was amended, a finding was inserted that the collision was caused by the fault or default of those in charge of both ships, no doubt because it was considered that such a finding was desirable in order to support the orders for suspension in the case of the Master of the "City of Sydney" and the Second Officer of the "Corchester". We entertain no doubt that the expression "those in charge of both ships" was intended to refer to the officers respectively in charge of the navigation of the two ships. Neither in its original nor in its amended form does the Report contain any express finding that the collision was caused by wrongful act or default on the part of the Appellant.

On the other side it was urged that, in spite of the absence from the Report itself of any express finding against the Appellant, it is sufficient if such a finding appears from the Report and Annex when read together. The paragraphs of the Annex in which the conduct of the Appellant was reviewed have already been read, and it was argued that the criticisms of his action therein contained amounted to a sufficient finding of wrongful act or default on his part causing or contributing to the collision.

Counsel for the Appellant, in presenting his argument on this aspect of the case, submitted, rightly in our view, that the problem must be broken down into three separate questions, as follows: (1) In order to found jurisdiction to suspend the Appellant's certificate must there be a finding against him

that the casualty was caused by his wrongful act or default? (2) If so, must such finding be stated expressly in the Report itself, or is it sufficient that it is contained only in the Annex? (3) If the latter, does the Annex contain a sufficient finding (a) that there was a wrongful act or default on the part of the Appellant, and (b) that such wrongful act or default was a cause of the casualty?

As to question (1), we entertain no doubt that the answer must be in the affirmative. In our judgment the only possible construction of Section 470 (1) (a) of the Act is that a Court holding a formal investigation has jurisdiction to suspend a Master's certificate only upon a finding that the casualty was caused by his wrongful act or default. This point was discussed, but not decided, in *The "Arizona"* (1880). 5 Probate Division, p. 123, to which our attention was called. In that case there was at least some doubt as to whether there was any finding by the Court that the casualty was caused by wrongful act or default on the part of the Master. But it was unnecessary to determine this question, since the appeal succeeded on the ground that, even assuming there was such a finding, the evidence in the case was not such as to justify it. In the course of his judgment in that case the learned President said, at p. 127: "Although I have said that we do not think it necessary to determine that question of law now, yet it is undoubtedly worthy of observation that neither in the formal report, nor in the reasons for it which have been given, does the learned judge state anything from which it can be inferred that he entertained the opinion that the default of the Master was the cause of the casualty". From this we think it can be inferred that, had it been necessary to decide the point in that case, the learned President would have decided, as we do, that the suspension of a certificate can only be supported upon a finding that the casualty was caused by wrongful act or default.

With regard to Question (2), while we think it desirable that, where an Officer's certificate is suspended, the Report itself should contain an express finding that the casualty was caused by a wrongful act or default on his part, we are of opinion that, provided the actual decision is stated in the Report, the fact that the finding on which it is founded is contained only in the Annex could not possibly be held to be a sufficient reason for upsetting the decision.

It is necessary, therefore, to consider closely the answer to Question (3), namely whether in this case the Annex to the Report does contain a sufficient finding against the Appellant to justify the suspension of his certificate. The material paragraphs of the Annex have already been read, and we think it right to say at once that in our view the findings against the Appellant have been stated in a most unsatisfactory manner. Having regard to the quasi-penal nature of this jurisdiction, it is most important that, where an officer's certificate is ordered to be suspended, there should be express findings in the clearest possible terms (a) that he was guilty of a specific wrongful act or default, and (b) that the casualty was caused or contributed to thereby. It cannot be right to state the criticisms of an officer's conduct in such vague terms as to leave it in doubt whether a finding that the casualty was due to his wrongful act or default is to be spelled out of the words used. In this case the material paragraphs of the Annex are so worded as to give rise to just such a doubt. The paragraph in which the criticisms against the Appellant are summarised begins with the words, "The evidence gave the impression" — not, we think, a very happy way in which to introduce what is said to be a finding of wrongful act or default. Similarly, to say that the Appellant's certificate is to be suspended "for his indirect contribution to this casualty" is, to say the least of it, an unfortunate way in which to express a finding that the casualty was caused by his wrongful act or default. This expression was seized on by Counsel for the Appellant as meaning that there was in fact no causal connection between the Appellant's behaviour and the collision. Relying on the decision in *In Re Polemis* (1921), 3 King's Bench, p. 560, he contended that that which is indirect cannot in law be regarded as a cause at all, and on this ground alone he argued that the suspension of the Appellant's certificate could not stand. We are not prepared to accede to this argument, for we do not think that a matter of this kind is to be determined by the attachment of a particular epithet to "cause" (see per Lord Sumner in *British Columbia Electric Railway v. Loach* (1916), 1 Appeal Cases, p. 719, at p. 727). At the same time we do think it right to emphasise that, in a case such as this, where the actual manoeuvres leading to the collision were those of the Second Officer, and where the whole gravamen of the criticism of the Appellant was that he was not there when he ought to have been, the circumstances were such as to call insistently for a specific finding as to whether the Appellant's absence was a cause of the casualty. Furthermore, the criticisms made of the behaviour of the Appellant, while indicating—if they are justified—some degree of dereliction of duty on his part, are not of such a kind as would necessarily or as of course justify a finding of wrongful act or default against him, so as to import penal, as opposed to Civil, consequences. Here again the circumstances were such as to call for a specific and clear finding whether the behaviour of the Appellant did amount to a wrongful act or default.

Having made these comments on the way in which the findings of the Court have been stated in the Annex to the Report, we proceed now to consider whether it is possible to spell out from the criticisms made of the Appellant's conduct a finding that the casualty was caused by his wrongful act or default, so as to justify the suspension of his certificate. Those criticisms, as we understand them, may be analysed as follows: The discipline maintained on board the "Corchester" was lax; from that resulted (1) the fact that no look-out was posted on the forecastle head when there should have been one, and (2) the fact that the Master absented himself from the bridge for 25 minutes in doubtful visibility, without taking steps either (a) to ensure that means were readily available to summon him back to the bridge if required or (b) himself to remain on the alert for any alteration in the conditions.

As to (1), it appears to have been conceded in the Court below, and it was conceded before us, that the absence of a look-out on the forecastle head could not be regarded as a cause contributing to the collision, for the reason that, had such a look-out been posted, and had he heard the fog signals of the approaching "City of Sydney", this would not have told the Second Officer in charge on the bridge any more than he already knew from his own observation of the Radar. This point, therefore, disappears out of the case.

As to the second point, it has been assumed, and we are prepared to assume, that, had the Appellant been on the bridge, he would not, with his experience, have made the same error in interpreting the Radar observations as appears to have been made by the less experienced Second Officer. But when considering the propriety or otherwise of the Appellant's absence from the bridge, we think that there is some force in the complaint made by Counsel for the Appellant that he was deterred from developing in full his argument on this point, having regard to the observations made by the Commissioner in the course of the argument—see particularly pp. 153 and 154 of the Record. Furthermore it is right, we think, to bear in mind that the very faults in navigation of which the Second Officer was found guilty—namely, his failure to reduce speed and his failure to sound fog signals—are of themselves directly relevant to the question whether the Appellant was sufficiently on the alert. Either a fog signal or a change in engine speed would immediately have called the Appellant's attention to the fact that conditions had changed. As it was, his first information of anything unusual was, as is found, the hearing of his ship's helm signal—which came only after the ships had already sighted each other.

The question whether, in the particular circumstances, the Appellant was justified in absenting himself from the bridge, and remaining out of touch with the navigating officer for so long, appears to us to be very largely one of seamanship, upon which we should be guided by the advice of the Elder Brethren. We have, therefore, sought their advice on this point. We wish to make it clear, however, that in doing so we have not thought it necessary to refer to the evidence, or to consider whether on the evidence the criticisms of the Appellant's behaviour, as set out in the Annex to the Report, were justified. Our question to the Elder Brethren is based on the findings stated in the Annex to the Report, and for the purposes of the question we assume, without deciding, that those findings are justified. We have thought it right to reduce to writing both our question and the answer of the Elder Brethren thereto.

Our question is as follows: "On the basis that it is found that the visibility was uncertain due to passing snow showers, but that at the time the Master left the bridge the visibility, though low, was sufficient, and, having regard also to the following circumstances: (1) that his vessel was navigating in the Would; (2) that there was no one on the bridge readily available to send for him; (3) that he was not immediately in contact with the voice-pipe in his cabin; and (4) that his first information of anything unusual was the hearing of his ship's helm signal, whereupon he came on the bridge, arriving just before the collision; was it unseamanlike conduct on the part of the Master to remain below in the saloon for a period of about twenty five minutes?".

To that question the Elder Brethren have returned the following answer: "No special precautions desirable because they were in the Would for a ship engaged regularly on the Coast. Accepting the fact that there was no one on the bridge readily available to send for him, and that he placed himself in a position out of contact with the voice-pipe, in our opinion the Master by such action opens himself up to criticism in regard to unseamanlike conduct. We consider the Master was wrong in remaining so long out of touch with the officer of the watch. We feel that he was not seriously to blame when it is considered this was a small ship and the ease with which any sound from the bridge by either fog signal, mouth whistle or telegraph would have reached him".

We accept unreservedly the advice tendered to us by the Elder Brethren, and on the basis of that advice we are satisfied that on the findings of the Commissioner the Appellant would be open to some degree of criticism from the point of view of seamanship. At the same time it is plain that the Elder Brethren, even on the assumption of the Commissioner's findings, are disposed to take a lenient view of any shortcomings on the part of the Appellant. In this we agree. We wish to make it plain, however, that nothing in this judgment is to be taken as encouraging any relaxation of the principle that, unless compelled by unavoidable necessity, it is the duty of the Master to be on deck at all times when the safety of the vessel requires his personal supervision. (See *Ewer v. Board of Trade*, 7 Rettie p. 835).

If, in spite of the lenient view of his conduct taken by the Elder Brethren, we were to find that wrongful act or default was established, we think there would be no doubt that it could be said to have caused, or at least to have contributed, to the collision, in the sense that the Master's presence on the bridge would in all probability have prevented the mistakes made by the Second Officer. Even so, we should have felt ourselves unable to hold that a punishment of suspension of his certificate for three months was justified, particularly as Counsel for the Minister was expressly instructed not to press for any suspension at all.

We revert, however, to the point that there is no specific finding of wrongful act or default on the part of the Appellant, and we are not prepared as an Appellate Tribunal to make any such finding.

In the absence of such a finding, there would not be, for reasons already given, any jurisdiction to suspend the Appellant's certificate. On this ground also the Appellant is entitled to succeed on this appeal.

MERRIMAN.

GORDON WILLMER.

MR. BRANDON: I ask the Court for the costs of this appeal. I have succeeded on both the main points argued, and as to the first point argued, in my submission the irregularities to which the Court has drawn attention are ones to which the other side to this appeal were parties, and that is a special reason, apart from the general rule about costs going to the successful party, why I should have the costs. There are authorities on these matters to which I can refer your Lordships if necessary. Perhaps it would be better for the Court to hear Mr. Naisby on the matter before I refer the Court to the authorities.

THE PRESIDENT: It was discussed in one of those cases we were referred to, was it not?

MR. BRANDON: Yes, my Lord. The general rule about it is on page 116 of *McMillan*.

THE PRESIDENT: Mr. Naisby, what do you say about this?

MR. NAISBY: My Lord, as always, costs are a matter of discretion, but in these Inquiries, and in the appeals in these Inquiries, there has been a sort of general line on which that discretion has been exercised, and I think I ought to call to your Lordships' attention a few of the cases for that reason. Perhaps we might begin with what is said in *McMillan* about it. At page 116 your Lordships will see this under the heading "Costs of Appeal": "The costs 'of and occasioned by the appeal' include, in addition to the ordinary legal costs of the appeal, the expenses of the assessors. Following the general rule, the Court will usually award costs to the successful party. Certain modifications, however, of this general principle are recognised. Costs may be used as a means of punishing a party who is deserving of censure. Thus, a successful appellant may be penalised in costs if his conduct has been such as to render an investigation reasonable" — and the reference there is to The "Arizona". In The "Arizona" the Appellant did get his costs, but it was stated in the Judgment on costs that if his conduct was such as to render an investigation reasonable he might not get his costs. Then *McMillan* goes on: ". . . . or if he has led additional evidence on appeal" —that does not apply here. On page 117 your Lordships will see this: "An unsuccessful appellant may be allowed costs if he has failed merely on technical grounds and would have succeeded on the merits; or, if his failure has been only partial, as where a sentence of suspension has been confirmed, but the period of suspension reduced. Similarly, the Board of Trade may be penalised in costs even where it has been successful, as where a large portion of the costs relates to matters which the Board has abandoned on appeal; or where they have failed in their duty at the original inquiry of expressing an opinion whether or not a certificate should be dealt with". We are not guilty in this case on that basis. "The Board of Trade may be required to bear the costs of proceedings which are entirely in the public interest, as where a preliminary motion was brought to determine a right of appeal which was contested by the Board"—and the reference there is to The "Royal Star". Perhaps the case which covers the widest amount is The "Carlisle", which is reported in 1906 Probate, page 301. I would like to refer your Lordships to the Judgment of Sir Gorell Barnes, as he then was.

MR. JUSTICE WILLMER: Before you read that, Mr. Naisby, can you tell me this? So far as the proceedings below are concerned, nothing was said about the Master's costs? Each party paid their own costs?

MR. NAISBY: Yes, my Lord. There is no power in the Wreck Commissioner, I think I am right in saying, to make an Order as to costs at large; he is only entitled to make an Order for the payment of a fixed figure as a contribution towards the costs, or something of that kind. The usual practice is that every party to an Inquiry bears its own costs, except in the cases where the award of costs is made against, for instance, an owner, or somebody of that sort—maybe a Master—as a penalty.

MR. JUSTICE WILLMER: An Order that the party should pay the Ministry's costs?

MR. NAISBY: An Order that the party should pay £1,000 or £200 or £50, or whatever it is, towards the Ministry's costs of the investigation.

THE PRESIDENT: You were going to refer to The "Carlisle", Mr. Naisby.

MR. NAISBY: Yes, my Lord.

THE PRESIDENT: There was no payment of costs below to be dealt with at all.

MR. NAISBY: Exactly, my Lord. Perhaps I had better read the headnote in The "Carlisle" so that we shall know what it is about, and then I will turn to where the learned President deals with the question of costs. The headnote, which is on page 301, reads as follows: "At the conclusion of the evidence in a formal investigation into the circumstances attending the loss of a British ship whereby loss of life ensued, the Board of Trade desired the opinion of the Court on (*inter alia*) the question whether the loss of the vessel and the loss of life was caused by the wrongful act or default of the Master; but the Board declined to say whether the certificate of the Master should be dealt with. The Court found that the loss of life was conduced to by the wrongful acts and default of the Master, and suspended his certificate for twelve months. A Divisional Court, sitting in Admiralty by way of appeal, came to the conclusion that the certificate ought to be returned to the Master as the evidence did not sufficiently establish that the loss of life was caused by his wrongful act or default, and the Divisional Court, under the discretionary powers conferred upon it by the Shipping Casualties Rules, 1895, rule 20 (i), ordered the Board of Trade to pay the costs of his successful appeal, on the ground that the Board should have assisted the Court below by intimating whether in their opinion on the evidence the certificate should be dealt with".

THE PRESIDENT: Because you took that line that would be a very good reason for not interfering with the absence of any Order in regard to costs below. It is impossible, is it not, on the first half of our Judgment in this case to avoid the conclusion that a great deal of the expense of this appeal is directly attributable to the action of your clients?

MR. NAISBY: I was, with respect, calling to the Court's attention what I thought were the principles, as I feel it my duty to do, on which the discretion was exercised, giving some instances and saying that I think Sir Gorell Barnes' Judgment covers a wider amount, and deals not only with the facts of that case - - - - -

THE PRESIDENT: May we read the passage?

MR. NAISBY: Yes, my Lord. It is the Judgment on costs and it is on page 310: "In this case there was an inquiry into the loss of the 'Carlisle', and the loss of life in connection with the loss of the ship, and the result was that the certificate of the master was suspended for twelve months. An appeal was afterwards lodged by the master from the decision of the magistrate, and that appeal was recently heard before this Court, and this Court, having regard to the evidence, came to the conclusion that the certificate ought to be restored to the master; that is to say, that the evidence did not sufficiently establish, after careful examination, that the loss of life—which was the point on which the magistrate had proceeded—

was 'caused by the wrongful act or default of the master'. Then there arose a question of the costs of the appeal, and it was thought by the Court desirable that the cases should be looked into and the older rules examined with a view to ascertaining the real position. It is not necessary to go so far back as the rules issued in 1876, because rules were issued in 1878, and of these rules No. 16 is material for present purposes. It runs as follows: 'On the completion of their examination the Board of Trade shall state in open Court upon what questions in reference to the causes of the casualty, and the conduct of any person connected therewith, they desire the opinion of the Court; and if any person whose conduct is in question is a certificated officer, they shall also state in open Court whether, in their opinion, his certificate should be dealt with'. The practice was in accordance with that rule for some time, and in 1879 a statute was passed which gave a right of appeal to this Court from the decision of a magistrate suspending a certificate. That right of appeal is continued by the Merchant Shipping Act, 1894. Now, there were two cases decided after the passing of the Act of 1879. One is *The 'Arizona'*, in which the master's certificate had been suspended, and there was an appeal; and as on appeal it was held, according to the headnote, 'that there was no evidence that the damage had been caused by the wrongful act or default of the master, the Court of Appeal reversed the decision and restored to the master his certificate'; and it is added: 'The Court below having suspended the certificate on the invitation of the Board of Trade, the Court of Appeal ordered the Board of Trade to pay the costs of the appeal'. That case was followed by *The 'Famenoth'*, in which the same course was adopted. I have before me the report of the magistrate, and I find that Counsel for the Board of Trade said: 'The Board of Trade are of opinion that the certificate of the master should be dealt with'. In that case also there was an appeal, and costs were allowed on the same grounds as in The 'Arizona', namely, that the suspension of the certificate having proceeded upon an expression of opinion that the magistrate should deal with the certificate, the effect was to invite the magistrate to deal with the certificate. Therefore the Court of Appeal held that the master should have the costs of the appeal. Then there came, after the Act of 1879 and after the Act of 1894, a fresh set of rules, viz., the 'general rules for formal investigations into shipping casualties, 1895'. Rule 11 is as follows: 'When the examination of the witnesses produced by the Board of Trade has been concluded, the Board of Trade shall state in open Court the questions in reference to the casualty, and the conduct of the certificated officers, or other persons connected therewith, upon which the opinion of the Court is desired. In framing the questions for the opinion of the Court the Board of Trade may make such modifications in, additions to, or omissions from the questions in the notice of investigation as, having regard to the evidence which has been given, the Board of Trade may think fit'. Rule 12 reads thus: 'After the questions for the opinion of the Court have been stated, the Court shall proceed to hear the parties to the investigation upon, and determine, the questions so stated. Each party to the investigation shall be entitled to address the Court and produce witnesses," and so on. Then the learned President goes on to say this: "Perhaps I should read also rule 13", and he reads it. Then: "There is one case that has been referred to since these rules were issued. That is the case of *The 'Throstlegarth'*, where there was a successful appeal from the suspension of the certificate, and this Court, being asked to deal with the costs, thought it was not a case in which the costs should be given against the Board of Trade—that they had acted with fairness both in the Court below and in the Court of Appeal, and, that having done so, in that case costs should not be given against them. That is the case principally relied upon by the Board of Trade. In that case there was no investigation or consideration of the principle which might apply to affect this question—it was apparently a decision upon the particular facts", and so on. Then the learned President goes on to say this: "There is no question whatever of the fairness and propriety of the conduct of this case by the Board of Trade. In former days", he had certain experiences. I thought that that Judgment covered perhaps some of the points that might be in your Lordship's mind in this case and contained more of the general principle than any one other Judgment. As I say, the matter of costs is purely a matter of discretion and, with the reference to *McMillan* and to *The "Carlisle"*, I have probably sufficiently discharged my duty in helping the Court as much as I can upon it.

THE PRESIDENT: What are you asking for, Mr. Brandon?

MR. BRANDON: An Order for the costs of this appeal to be taxed and paid by the Respondents to the Appellant.

THE PRESIDENT: We need not trouble you, Mr. Brandon. We do not propose to make any Order about the costs below, but the Appellant will have the costs of this appeal.

MR. BRANDON: If your Lordship pleases.

MERRIMAN.

GORDON WILLMER.