

(No. 3215.)

"KAPUNDA"
AND
"ADA MELMORE."

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the formal Investigation held at the Sessions House, Westminster, on the 21st, 22nd, 23rd, 24th, 25th, and 29th days of March 1887, before H. C. ROTHERY, Esquire, Wreck Commissioner, assisted by Captains METHVEN and PARISH and Vice-Admiral CURME, as Assessors, into the circumstances attending the collision between the sailing ships "KAPUNDA" and "ADA MELMORE," on the 20th of January 1887, whereby both ships and 299 lives were lost.

Report of Court.

The Court, having carefully inquired into the circumstances of the above-mentioned shipping casualty, finds, for the reasons annexed, that the said collision was due to the wrongful acts and defaults of William Millikin, the master, and of Nelson Wannell, the chief officer of the "Ada Melmore." The Court accordingly suspends the certificate of the said William Millikin for two years, but recommends that during the period of the suspension of his master's certificate a first mate's be granted to him.

Dated this 29th day of March 1887.

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

We concur in the above report.

(Signed) R. METHVEN,
ALFRED PARISH, } Assessors.
C. V. CURME, }

Annex to the Report.

This case was heard at Westminster on the 21st, 22nd, 23rd, 24th, 25th, and 29th days of March 1887, when Mr. Charles Hall, Q.C., and Mr. Mansel Jones appeared for the Board of Trade; Mr. Kennedy, Q.C., and Mr. Walton for the owners and chief officer of the "Kapunda," and Mr. Barnes and Mr. Praed for the owners; and Sir Walter Phillimore, Q.C., and Mr. Holman for the master and chief officer of the "Ada Melmore." Twenty-six witnesses having been produced by the Board of Trade and examined, Mr. Hall handed in a statement of the questions upon which the Board of Trade desired the opinion of the Court. Mr. Kennedy and Sir Walter Phillimore having each produced a witness, then addressed the Court on behalf of their respective parties, and Mr. Barnes having been heard on behalf of his parties, and Mr. Hall for the Board of Trade, the Court proceeded to give judgment on the questions on which its opinion had been asked.

This is a case of great interest and importance, mainly to the very great loss of life which has occurred, and to the many lamentable circumstances by which it has been attended. The facts, however, are simple, and are practically not disputed; and after the very full inquiry which we have had, the whole of the survivors from the "Ada Melmore," and all the men, and four out of the eight passengers saved from the "Kapunda," having been examined, and after the able arguments which have been addressed to the Court by the learned counsel who have appeared before it, the Court can have no difficulty in arriving at its decision.

The case of the "Kapunda" is as follows:—She was a full-rigged iron ship, belonging to the Port of London, of 1,145 tons gross and 1,094 tons net register, was built at Dumbarton in the year 1875, and at the time of her loss was the property of Mr. John Rodgeron Anderson,

of No. 110 Fenchurch Street, London, and others, Mr. Anderson being the managing owner. She left Plymouth on the 18th of December last for Fremantle, in Western Australia, with a crew of 41 hands all told, and 273 passengers, and having on board about 600 tons of general merchandise, besides 300 tons of ballast. All went well until early on the morning of the 20th of January following, when, we are told, the weather was fine and clear, the stars shining, and the vessel was under all plain sail except spanker, making about 10 knots an hour, and heading about S.W. $\frac{1}{2}$ S. by the standard compass, equivalent to about S.S.W. magnetic, the wind at the time being by compass S.E. to S.E. by E., or approximately E.S.E. It was the chief officer's watch from 12 to 4 a.m., consisting of himself, the third officer, two quartermasters, and 12 A.B's; and at 2 a.m. the chief officer and the third officer were on the poop, one of the quartermasters was at the wheel, and an able seaman named Lohmann was forward on the look-out. At 3.10 the chief officer went forward to see that his lights were burning properly and that the men were attending to their duties; and, having done so, he returned to the poop, and about ten minutes afterwards the look-out man reported that there was a vessel on the lee bow, and immediately afterwards reported a vessel on the starboard bow. The chief officer thereupon went over to the starboard side of the poop, and looking ahead saw a vessel, which afterwards proved to be the "Ada Melmore," at the distance of about a quarter to half a mile, and about $2\frac{1}{2}$ points upon his starboard bow, just clear of the clew of the foresail. Not seeing any light, and not knowing, therefore, the direction in which she was approaching, he ordered the helm to be put hard down, and at the same time stamped on the deck to call up the captain. Whilst he was stamping the captain came up, and on going over to the starboard side, and looking ahead, he asked how the helm was, and was told that it was hard down, upon which he said, "She will go clear"; but immediately afterwards he shouted out, "Good God! she has put her helm hard down, and will be into us." In another instant the "Ada Melmore" ran into them, striking them nearly a stem-on blow forward of the fore rigging on the starboard side, and cutting into her nearly as far as the fore hatch. The "Kapunda," with the way which she had on her, carried the "Ada Melmore's" head round until the latter's sails were taken aback, when she got stern way and went clear, but not before nine of the "Kapunda's" people had got on to the "Ada Melmore," and two of the "Ada Melmore's" people had got on board the "Kapunda." Immediately afterwards the "Kapunda" sank, taking all on board with her; and of these one only, the chief officer, was subsequently picked up by a boat from the "Ada Melmore," and six others having got on to the keel of the "Kapunda's" life-boat, which they found floating bottom upwards, succeeded at daybreak in righting her, and, having set her sail, ran down before the wind to the "Ada Melmore," which they reached at between 10 and 11 o'clock the same morning. Of the persons on board the "Kapunda" no less than 264 of the passengers and 33 of the seamen, as well as the two seamen from the "Ada Melmore" who had got on board the "Kapunda," making a total of 299 souls, were drowned; only 8 passengers and 8 of the crew of the "Kapunda" having been saved.

The case of the "Ada Melmore" is as follows:—She was an iron barque, belonging to the Port of Belfast, of 591 tons gross and 569 tons net register, was built at Port Glasgow in the year 1877, and at the time of her loss she was the property of Mr. William Porter, of No. 56 Waring Street, Belfast, and others, Mr. William Porter being the managing owner. She left Coquimbo, on the West Coast of South America, on the 3rd of December last, with a crew of 14 hands all told, and 843 tons of manganese ore, bound to Queenstown and Falmouth for orders. Nothing particular occurred until the early morning of the 20th of January following, when we are told the weather was fine and clear, the stars shining, and the vessel was under all sail, close hauled to the wind on the starboard tack, making about $6\frac{1}{2}$ knots, the wind at the time being somewhere between east and E.S.E. It was the chief officer's watch from midnight to 4 a.m., consisting of himself and 4 A.B's, namely, Fizone, Serle, Morris, and Beckman. At 2 a.m. the chief officer was on the poop, Fizone went

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to the wheel, and Serle went on the look-out, the two others, Morris and Beckman, being the stand byes. Shortly after 3 o'clock the chief officer told Fizone that he was going forward to the water closet, which was under the break of the forecastle, and asked him to look after the vessel whilst he was away. He told us that he was there about 4 minutes, and that, on coming out, and when he was about to go aft, Serle the look-out man asked him to come on the forecastle, for that he saw something ahead, and thought it was a light. Accordingly the chief officer went on to the forecastle, and looking ahead saw, what he told us he took to be the red light of a vessel, which afterwards proved to be the "Kapunda," nearly ahead, but a little on the lee or port bow, and distant about 2½ miles. He accordingly went over to the weather side of the forecastle, and called out to the man at the wheel to luff, and he then ordered the two spare hands, Beckman and Morris, to get out the side lights, these not being at the time exhibited. He then went aft to look for his glasses, but after looking for them in the place where they were usually kept, but without finding them, he went forward again to hurry the men up with the side lights. In going forward he met Beckman coming aft with the red light to put it in the mizen screen, and when he got forward he saw Morris take the green light, and put it into the forward screen on the starboard side. The mate then went aft again, and whilst he was standing on the break of the poop watching the "Kapunda," which, according to him was then nearly ahead, but according to the two other witnesses, Fizone and Morris, was a little on their starboard bow, he suddenly saw the masts open and her green light appear, showing that she was luffing up across his bows, upon which he immediately gave orders to hard down the helm, and when she had come up some 2 to 2½ points, she struck the "Kapunda" at an angle of something like 6 points just forward of the fore rigging on the starboard side. The two vessels soon cleared one another by the "Ada Melmore's" sails being taken aback, and on then examining the "Ada Melmore's" bows it was found that they were stove in pretty nearly up to the collision bulkhead. Orders were accordingly at once given to get out the boats, and in about a quarter of an hour to 20 minutes they got out the pinnace, which was the last boat on the starboard side; and having done so, all hands set to work to get out the life boat. As soon as that had been done, the life boat was sent off with the second officer and four hands to pick up any of the people from the "Kapunda" who might still be afloat. They were away some half to three quarters of an hour, and having picked up the chief officer of the "Kapunda" the boat returned to the "Ada Melmore" in obedience to a signal which had been agreed upon when she left. In the meantime the "Ada Melmore" had been lying with her sails aback head to wind and drifting to leeward with the topsails and topgallant sails mast headed, at the rate of a knot an hour at the least, the men all the time being engaged in the hold shoring up as they best could, the collision bulkhead to prevent its giving way. At daylight they commenced discharging some of the cargo from the forehold, and having taken out about 90 tons a chain was passed under the fore foot of the "Ada Melmore" and secured on deck so as to prevent the bow plates from opening, and she was then put before the wind under easy sail to make Pernambuco, the place of collision we are told being in about latitude 13° 40' south and longitude 27° 20' west, and about 640 miles from the coast of Brazil. On the 26th of January they fell in with a French barque called the "Ulysse," which took on board 19 of them, namely, 14 of the "Kapunda's" people, and 5 belonging to the "Ada Melmore," and subsequently landed them at Bahia. The remainder, namely, the master, the two officers, the carpenter, the steward, one A.B., and an apprentice of the "Ada Melmore," as well as a carpenter and an A.B. from the "Kapunda" volunteered to remain by the "Ada Melmore" and try to get her into port. On the 28th, however, the bulkhead began to shew clear signs of giving way, upon which all hands got into the boats, which had been properly provisioned for that purpose, and soon afterwards the "Ada Melmore" foundered. The boats continued to steer for Pernambuco, but on the 29th, finding that they had got about 60 miles to the southward of it, the course was altered for Maceio, which they reached on the 31st of the same month.

These then being the facts of the case, the first question upon which our opinion has been asked by the Board of Trade is, "Whether the 'Kapunda' was pro-

perly equipped with boats and life-saving apparatus "in accordance with the requirements of the Passenger Acts, and whether the same were kept ready for use?" By section 27 of the Passengers Act, 1855, a ship with a tonnage of from 1,000 to 1,500 tons is required to have six boats, and four properly fitted life-buoys. We were told by Mr. Turner, the Shipwright Surveyor to the Board of Trade in London, that previous to the departure of the vessel, he had gone on board and examined her boats and life-buoys carefully, and had found them to be all in a thoroughly good and efficient state. He stated that she had six boats with a capacity of 110 feet in excess of that which she was required to have, and that she had 6 life-buoys and 18 life-belts, if not more. It seems also that she always carried one of her boats in the davits, ready to be lowered on an emergency. In our opinion, therefore, the "Kapunda" was fully supplied with boats and life-saving apparatus in accordance with the requirements of the Passenger Acts, and the same were kept ready for use.

The second question which we are asked is, "Whether the 'Ada Melmore' carried the boats required by Section 292 of the Merchant Shipping Act 1854, and whether they were kept so as at all times to be fit and ready for use?" According to Schedule S referred to in the 292nd Section of the Merchant Shipping Act, 1854, a vessel of the size of the "Ada Melmore" should have three or four boats of the required dimensions and two life-buoys. The "Ada Melmore" had four boats and four life-buoys, and as we are told that the boats were of the required dimensions, she seems in this respect to have complied with the provisions of the Act. But were they so carried as to be at all times fit and ready for use? The pinnace and lifeboat, we are told, were aft, the gig and the dingy were forward on the deck-house; they were all bottom upwards and lashed down to the deck; but the tackles were rove and at the davits, and the oars were in the boats and lashed to the seats. No doubt they were a considerable time getting out their boats when the emergency arrived, the pinnace not having been got out under a quarter of an hour to 20 minutes, and about the same time having been occupied in getting out the lifeboat, so that no boat could be sent off to the assistance of the "Kapunda's" people until more than half an hour after the collision. At the same time, seeing that she was only 569 tons register, that she had a heavy dead weight cargo on board, and had just come round Cape Horn, the assessors are disposed to think that the boats were as ready and fit for use as might reasonably be expected in such a vessel.

The third question which we are asked is, "Had the 'Ada Melmore' a sufficient supply of oil, when she left Coquimbo, and were her side lights kept properly trimmed?" We are told that on leaving England, which she seems to have done on the 3rd of June last, she had a cask of 42 gallons of paraffin in addition to 10 gallons in a tank; she had also a 40 gallon cask, and a 10 gallon drum of colza oil. After discharging a portion of her cargo at Valparaiso, she proceeded to get under way for the purpose of going on to Coquimbo, and in heaving up the anchor the cask of paraffin, which had been secured to the palls of the windlass, was upset, and a quantity of the paraffin was lost, but we do not know how much. The result was that, when she left Coquimbo she had only from 8 to 12 gallons of paraffin, and about 20 to 25 gallons of colza in the cask, besides a drum of 10 gallons untouched. We are told that on the outward voyage they burnt paraffin, not only in the cabin, but also in the binnacles and the side lights, and colza only in the galley and the forecastle. But on the homeward voyage, owing to the short supply of paraffin, they had to mix the paraffin and the colza oil for the side lights and the binnacle lights, but paraffin still continued to be burnt in the cabin. We were told by a Mr. Martin, of East India Dock Road, Lincolns Inn, a manufacturer of ships' lamps, that a mixture of paraffin and colza oil burns very well, and is very frequently used. He told us that paraffin runs readily and does not clog the wick, but that it is very likely to go out when the lamp is violently shaken; that on the other hand colza does not run so readily, and has a tendency to clog the wick, but that it burns steadily and will not go out with a blow. On this account he said that they are often mixed, and used for the side lights, as it runs more readily than pure colza, but that colza is generally used in the masthead light. With this evidence before us it is not easy for us to say that it was improper to use colza and paraffin mixed. It seems that the trimming of the side light was entrusted to two of the apprentices and an ordinary seaman, who took it week and week about, and wh

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stated that the lights were always properly trimmed, but Morris, the man who lighted the green light just before the collision, told us that he could not get the wick up, so that he could not light it properly, and he attributes it to the wicks having become clogged. Whether this was due to the mixture of colza oil and paraffin, or to neglect on the part of the person required to trim it, certain it is that on this occasion at any rate the light was not properly trimmed. If, too, paraffin was the proper oil to use in the side lights and binnacle on the voyage out, there seems to be no reason why it should not have been used on the homeward voyage; and if this oil would have been better for the purpose, it was the duty of the master to replenish his stock either at Valparaiso or at Coquimbo.

The fourth question which we are asked is, "Whether the 'Ada Melmore' carried and exhibited at all times from sunset to sunrise, and particularly on the 19/20 January, the lights required by Article 6 of the Regulations for Preventing Collisions at Sea; and if not, whether the omission to do so contributed to the casualty." When the "Ada Melmore" left England she carried her side lights, where she had always hitherto done since 1877, in screens placed just forward of the fore-rigging on each side. Encountering however a severe gale on the way out between the River Plate and Cape Horn, a portion of the rail, on which the port screen stood, was carried away, and the master thereupon directed the carpenter to place two screens in the mizen rigging aft, one on each side, for the lights. We are told that they stood some 4 feet 6 to 5 feet above the deck, and were blocked off from the mizen rigging by wooden blocks 5½ inches wide at the top, and bevelled off to 4½ inches at the bottom. No steps were taken on the arrival of the vessel at Valparaiso to repair the port rail or to replace the forward screen on the port side, which had been carried away, but the two screens were left in the mizen rigging aft, as well as the screen on the starboard side forward, and they so remained down to the time of the collision.

Now we were told by the master, that in rounding Cape Horn they had their side lights out, in accordance with the regulations, from sunset to sunrise, owing to the weather being stormy; and that they continued to carry them until they got to about the latitude of the Falkland Islands; but that from there, the weather being clear and fine, they were not carried except on one night some 4 or 5 days before the collision, when the weather had been bad; but that they always had them ready to shew, in case they should meet any vessel. The practice, he said, which he adopted, was the same as is usually followed by all cargo vessels, namely, not to carry the side lights when the weather is fine and clear, and when they are not in the track of vessels. On looking, however, at the log-book, we find that they passed the Horn on Christmas Day, and the Falkland Islands, which are in about latitude 51° or 52°, at the end of the year; so that from the beginning of January, and whilst traversing nearly 40° of latitude, the collision having occurred in between latitude 13° and 14°, they carried no lights at nights except once. Moreover, when we come to look carefully at the log-book, we find that after passing the Falkland Islands, there were many days when they had bad weather and heavy rains, and yet they would seem not to have carried their side lights on those nights. They had also passed the latitude of the River Plate and of Rio Janeiro, and must, therefore, have been for some time in the track of shipping. So that it would seem that the practice of not carrying the side lights was not confined to those days on which the weather was fine and clear and they were out of the track of shipping, but was followed even when the weather was bad with heavy rain, and they were in the track of shipping. If, indeed, we are to believe the second officer, they never carried their side lights except once from the time of leaving Coquimbo. But however this may be, it is admitted that they were not in their screens when the "Kapunda" was first sighted; and a very important question then arises under the 17th section of the Merchant Shipping Act, 1873. That section is in these words:—"If in any case of collision it is proved to the Court before which the case is tried, that any of the regulations for preventing collisions contained in, or made under the Merchant Shipping Acts, 1854 to 1873, has been infringed, the ship, by which such regulation has been infringed, shall be deemed to be in fault unless it is shewn to the satisfaction of the Court that the circumstances of the case made departure from the regulation

"necessary." It is admitted that there has in this case been a violation of the regulations as to lights on the part of the "Ada Melmore," and it is also clear that the circumstances did not make a departure from the regulations necessary; the case, therefore, would seem to fall under that section. But Sir Walter Phillimore has contended that that section does not apply to the present proceedings; he has said that this is not a case of collision which is being tried, for that that question will have to be tried elsewhere; and he has gone further, and said that, although it might be quite right and proper that such a provision should be applied in the case of a civil action for damages where the rights of the owners were at stake, it would be very hard to apply it in a proceeding of this kind, where the certificates of the officers are at stake. I fear, however, that I am not able to concur with Sir Walter Phillimore in that view. It appears to me that this is certainly a case of collision which we are now trying, and that what we have been endeavouring to do is to ascertain what were the causes of that collision, and how and by whose means it was brought about; and the question of the suspension or cancellation of the certificates of the officers is only an incident in the case. Moreover, it seems to me that it is more reasonable to hold that the provisions of that section are binding on an officer who has committed a breach of the regulations, than to say that it shall apply to the case of an owner, who can hardly be supposed to have given his servants authority to commit so gross a violation of the regulations. In my opinion, the section does apply to this case; whether, however, an infringement having occurred, we are absolved from inquiring whether that infringement did or did not contribute to the collision is a different question. I am told that it has been held that in the Court of Admiralty it is so, but we can hardly take that course, for one of the questions which we are asked is, whether the omission to carry the side lights contributed to the casualty? It therefore becomes necessary to inquire whether the side lights were ever put into the screens before the collision; and, if so, when, where, and in what condition they were at the time, before we can say how far the breach of the regulation as to the lights did or did not contribute to the collision.

Now the first thing that strikes us is that all the witnesses from the "Kapunda" distinctly swear that they never saw the side lights of the "Ada Melmore," either before or after the collision; and as Mr. Hall has justly remarked, some of these, and especially the chief officer, would have a special object in looking for her lights, as it would direct them as to whether they ought to port or starboard their helm. The poor men, too, who were in the water for so long, and whose eyes would naturally be directed towards the "Ada Melmore" as the only place from which they could look for succour, and who would necessarily watch everything that was happening on board her, could hardly have failed to see one or other of the side lights had they been alight, and yet not a single one of the "Kapunda's" witnesses saw any, either before or after the collision. There were also the witnesses Broadhurst, Barnes, and Wiggins, three of the "Kapunda's" passengers who got on board the "Ada Melmore" when the vessels were in contact, and who told us that on getting on board they at once went aft, and seeing the master of the "Ada Melmore" on the poop, Broadhurst asked him where his lights were, to which he replied that they had gone out. The master says that he did not remember any such conversation having taken place, but it is sworn to by these three witnesses, and we have no reason to think that they invented it. Moreover it seems a not unnatural answer for the master to have made, for he knew that his lights had not been put into the screens that night, and he admits that he never saw them alight either before or after the collision. The conclusion, then, which we should be disposed to draw, if we had nothing but the evidence from the "Kapunda" before us, would be either that her side lights were never put out at all that night, or that, if they were, they were burning so very badly that they were not visible to the "Kapunda's" people. But the case does not rest there, for we find that, out of the survivors from the "Ada Melmore" herself, 12 in number, no less than six are not able to say that they ever saw either of the side lights burning that night; they are the captain, the second officer, the carpenter, Kalsböhl and Petersen, two of the able seamen, and Thompson the apprentice. Now it certainly does seem very strange that none of these people should have seen the side lights, if they had really been burning, and burning properly; one would have thought that after so terrible a collision the

first thing that the master, at all events, would have done would have been to have seen whether or not his side lights were burning. At the same time it may be said that this is only negative evidence, evidence that the lights were not seen by those persons; and it becomes, therefore, important to examine the positive evidence on the subject. The first and most important witness on the point is, of course, Wannell, the first officer of the "Ada Melmore," who told us that, on seeing the "Kapunda's" light ahead, or a little on the lee bow, he gave orders to get the "Ada Melmore's" side lights out, that he then went aft to look for his glasses, and, not finding them, again went forward to hurry up the men with the lights, and as he did so he met Beckman carrying the port light aft to put it in the screen in the mizen rigging. He told us, also, that he saw Morris put the green light into the forward screen, on the starboard bow, that being the most handy at the time. Beckman, the man who is said to have lighted the red light, was, unfortunately, one of the two seamen who got on board the "Kapunda" and went down with her. Then there is Morris, who told us that, when he went to light the green light, he found he could not get the wick up, and that Beckman had lighted the red light and started off with it before he had got his alight. He said that, whilst he was still trying to light it, Serle, the look-out man, called out to him to hurry up, and he did so, and dropped it into the forward screen, saying at the same time to Serle, "If it will do for you, it will do for me"; he told us, however, that he never was able to get the wick up, and that it was burning dimly when he put it in the screen, and that he never after looked to see if it was burning; and, so far as we can see, there is not a single witness who can speak to the green light having been burning after it was put into the screen. The next witness is Fizone, the man at the wheel, who told us that he saw Beckman put the red light into the after screen, but he does not say whether it was burning brightly or not at the time. Morris also tells us that he saw the red light in the after screen, and that, when the boats had gone away, on hearing that a light was wanted in the fore hold, where they were shoring up the collision bulkhead, he went and took the red light out of the screen and carried it down into the hold. Then we have Boyden, the steward, who told us that after daylight he saw the lantern with the red light in it, not in the screen, but standing on the poop, and that the light was burning, but very faintly, and that he took it up and gave it a shake, and that the light then went out. Hall, an apprentice, said that when he was away in the boat he saw the red light, but whether it was in the screen or on the deck he could not of course say. Lastly, we have the evidence of Kalsböll, the ordinary seaman, who stated that on his return to the vessel, after picking up the chief officer of the "Kapunda," he saw both the side lights in the after screens, and both were burning brightly. This is the whole of the evidence that we have as to the lights. Now it is not very easy to understand how, if Morris took the red light out of the screen whilst the boat was away, and carried it down into the fore hold, it could have been seen after daylight by Boyden on the poop, and still burning. Nor is it possible to understand how Kalsböll could, after the return of the boat, have seen the green light in the after screen, when it is not pretended that it was ever put there. Kalsböll, too, it should be observed, is the only witness, so far as I remember, who pretends to say that the lights were ever burning brightly. The evidence is, in our opinion, very conflicting; and although we are quite prepared to admit that the side lights may have been put into their screens before the collision occurred, it is in our opinion quite clear that the green light at all events was never properly lighted, and never burnt otherwise than faintly, even if it burnt at all, after it was put into the screen. As regards, too, the red light, one fact must not be forgotten, and that is, that the "Ada Melmore" had at the time her square foresail, square main sail, and spanker set, and being on the starboard tack, with the sails over to port, it is quite possible that the red light, placed as it was in the after mizen rigging, which we are told was not the widest part of the ship, might, even if it had been burning brightly, not have been visible to a vessel approaching her from ahead, even though that vessel had been a little on the "Ada Melmore's" lee bow. The assessors think that the red light might, under these circumstances, very possibly, have been screened by the sails. A question then arises how far the condition of the "Ada Melmore's" lights, and their position on board the vessel, may have

contributed to the casualty; but this would in a great measure depend upon the direction in which these two vessels were approaching one another, and may therefore be more conveniently dealt with in our answer to the next question.

The fifth question which we are asked is, "Whether the 'Kapunda' and the 'Ada Melmore' respectively complied with articles 14 and 22 of the 'Regulations?' The "Kapunda," it is admitted, was on the port tack, not quite close hauled to the wind, but sailing within about seven and a half points of it, being anxious, according to Mr. Cottrell, the chief officer, to get as soon as possible across the south-east trades. On the other hand, the "Ada Melmore" was on the starboard tack, and it is said was as close hauled to the wind as she could get, as she had during the last few days been driven somewhat to the westward of her course, and was therefore anxious to get as far to the eastward of it as she could. This being so, it would be the duty of the "Kapunda" to get out of the way, and of the "Ada Melmore" to keep her course. The course, also, of the "Kapunda" being about $7\frac{1}{2}$ points from the wind, and that of the "Ada Melmore" about 6 points from it, their courses would cross at an angle of about two to two and a half points, the "Kapunda" crossing the "Ada Melmore's" course from port to starboard, and the "Ada Melmore" crossing the "Kapunda's" course from starboard to port. This being so, and before either vessel had crossed the point of intersection of the courses, the "Kapunda" would have the "Ada Melmore" on her starboard bow, and the "Ada Melmore" would have the "Kapunda" on her port bow. And that this was the direction in which they were approaching one another, is in our opinion clear, from the evidence of the witnesses on both sides. Let us first take the evidence from the "Kapunda." Every witness from that vessel who speaks to the point says that the first report of the "Ada Melmore" was, vessel on the lee or starboard bow, except Forbes, the carpenter, who said that the report was vessel ahead, but Forbes, when he gave his evidence, was evidently a little deaf, moreover when he heard the report he was in his bunk, turned in, and would therefore not be so likely to hear what the report was as those who were on deck. Moreover Mr. Cottrell, the chief officer, and every other witness who could speak to the fact, said that on hearing the report they looked over the starboard side and saw the "Ada Melmore" 2 points to $2\frac{1}{2}$ points on their starboard bow. If, then, this evidence is to be believed, and I do not know why it should not be, it seems clear that the "Ada Melmore" was from the first, and before the helm of the "Kapunda" had been altered, from 2 to $2\frac{1}{2}$ points on the "Kapunda's" starboard bow. As regards the "Ada Melmore," there were only three witnesses who could speak to having seen the "Kapunda's" light before the collision; these are Wannell, the chief officer, Fizone, the man at the wheel, and Morris, one of the stand-bys, the other two who formed the watch on deck, namely, Serle, the look-out man, and Beckman, the other stand-by, having been drowned. Now Wannell, the chief officer, states that when he first saw the "Kapunda's" light it was nearly ahead, or a little on the lee or port bow, and that he took it to be a red light. Fizone says that when he got the order to luff he luffed, and on then looking ahead he saw a light, but whether it was a green or a red light he could not say, half a point upon his starboard bow. Lastly we have Morris, who says that he did not see the "Kapunda's" light until after he had lighted his own lamp and had put it into the screen, which must have been some time afterwards, and that then he saw the green light one point upon the starboard bow. The evidence of these three witnesses is quite consistent, and seems to shew that the "Kapunda," when her light was first seen by the "Ada Melmore's" mate at a distance of some $2\frac{1}{2}$ miles, was nearly ahead or a little upon his lee or port bow; that when Fizone saw it, which was some short time afterwards, it was half a point on his starboard bow; and that subsequently, when Morris saw it, and when he was able to make it out clearly to be a green light, it had got a point on his starboard bow; it was, therefore, apparently drawing across their bows and passing from port to starboard. Morris, too, is the only person who can speak positively to the colour of the light, and he tells us that it was a green light; all that the chief officer can say is that he "took" it to be a red light, and Fizone says that he does not know whether it was red or green. It is obvious, too, that it must have been throughout a green light, for in that way only can we account for the light being seen first

a little on the "Ada Melmore" point on her starboard bow. If, then, evidence, the "Kapunda's" lights had been put out the two vessels would have side.

This being so, the "Kapunda," seeing the "Ada Melmore" on her starboard bow, and on in which direction the lights, very naturally, a wider berth, and right, as it was her of the way. And the "Ada Melmore" does? the wind, until she appear, when she and throws herself a green light, and for doing so is that therefore he vessel had luffed should not have duty to keep her must therefore be the "Ada Melmore" and not shewing her helm, and the helm down and it it was her duty article of the Regulations.

The sixth question is, "good and proper vessels?" The "Ada Melmore" was not a good look-out but it is said that the "Ada Melmore" sooner night, with the her last quarter told, however, by kind of night on the sails of a vessel sailor's expression would be very considered that the at the rate of bet subsequently of a n be supposed the little time, after of her way. A look-out man attending to h nately drowned chief mate, owing and therefore tion of the app for us to say.

The seventh question is, "every possible officers of the "Kapunda" is said that the boats and going people who were pinnace might the water, with But we must the "Ada Melmore" was to the collision danger that it would have in stances, and own crew, but or 21 persons for having kept out the lifeboat way without perished. No officer and they were within 600 miles from unwilling to is, however, master may Whilst he was wards, he se with the vessel ing to his own Instead of w the cap, he n

a little on the "Ada Melmore's" port bow, then half a point on her starboard, and then a point on her starboard bow. If, then, we are to believe Fizone and Morris' evidence, the "Kapunda's" green light had got on to the "Ada Melmore's" starboard bow before the latter's lights had been put out, and consequently at that time the two vessels would be starboard side to starboard side.

This being so, the case seems to be quite clear. The "Kapunda," seeing a vessel some $2\frac{1}{2}$ points on her starboard bow, and only a $\frac{1}{4}$ to $\frac{1}{2}$ mile off, and not knowing in which direction she was going, as she shewed no lights, very naturally starboarded her helm to give her a wider berth, and in doing so she did what was quite right, as it was her (the "Kapunda's") duty to keep out of the way. And now what is it that the "Ada Melmore" does? She kept her course close hauled to the wind, until she sees the green light of the "Kapunda" appear, when she immediately puts her helm hard down, and throws herself up into the wind; she, in fact, ports to a green light, and the excuse which the chief officer gives for doing so is that he saw the other vessel luff, and that therefore he luffed too; but the fact that the other vessel had luffed should have been a reason why he should not have luffed; it was the "Ada Melmore's" duty to keep her course. Our answer to this question must therefore be that the "Kapunda," when she saw the "Ada Melmore" $2\frac{1}{2}$ points on her starboard bow, and not shewing any lights, did quite right to starboard her helm, and that the "Ada Melmore," in putting her helm down and throwing herself up into the wind, when it was her duty to keep her course, violated the 22nd article of the Regulations.

The sixth question which we are asked is, "Whether a good and proper look out was kept on board both vessels?" There is no reason to think that there was not a good look out being kept on board the "Kapunda," but it is said that, if so, she should have seen the "Ada Melmore" sooner. We are told that it was a clear fine night, with the stars shining, and that the moon was in her last quarter, it having risen at about 2 a.m. I am told, however, by the assessors, that that is exactly the kind of night on which it would be very difficult to see the sails of a vessel at any distance; the sails, to use a sailor's expression, would have a "horizon colour," and would be very indistinctly seen. When, too, it is considered that these vessels were approaching each other at the rate of between 16 and 17 knots an hour, and consequently of a mile in less than 4 minutes, it may well be supposed that the "Kapunda" would have very little time, after seeing the "Ada Melmore," to get out of her way. As regards the "Ada Melmore," she had a look-out man forward, and he appears to have been attending to his duty, but he has been unfortunately drowned. Whether any time was lost by the chief mate, owing to his having been in the water closet, and therefore not having received the earliest intimation of the approach of the "Kapunda," it is impossible for us to say.

The seventh question which we are asked is, "Whether every possible effort was made by the master and officers of the 'Ada Melmore' to save life?" It is said that there was some delay in launching the boats and going to the assistance of the unfortunate people who were struggling in the water, and that the pinnace might have been sent off as soon as it was in the water, without waiting to get out the lifeboat. But we must look at the state in which the "Ada Melmore" was, with her bows crushed in pretty nearly to the collision bulkhead, so that there was great danger that it might give way, in which case the vessel would have instantly foundered. Under these circumstances, and considering that he had not only 12 of his own crew, but 9 of the "Kapunda's" people on board, or 21 persons altogether, we cannot blame the master for having kept the pinnace alongside until he had got out the lifeboat, as in the event of the bulkhead giving way without a boat alongside they might all have perished. Nor are we disposed to blame the second officer and the men who went with him in the boat; they were without water or provisions, and were some 600 miles from the land, and very naturally they were unwilling to get too far away from their ship. There is, however, one thing in which we think that the master may properly be held to have been to blame. Whilst he was getting out the boats, and even afterwards, he seems to have kept all his sails mastheaded, with the vessel drifting to leeward at the rate, according to his own statement, of at least a knot an hour. Instead of which, if he had lowered his sails down on the cap, he might have kept her nearer to the place of

the collision, and thus have been able to pick up some more of the people.

The eighth question which we are asked is, "Whether both vessels were navigated with proper and seaman-like care?" It is difficult to conceive a greater contrast than that presented by these two vessels. On board the "Kapunda" everything was orderly and proper; she had her side lights exhibited and burning brightly; she had two officers on the poop, a quarter-master at the helm, and a look-out man forward, whilst another quarter-master was on deck, with orders to report to the officer of the watch every half hour the condition of the lights. We are told, also, that it was the practice of the officer of the watch to go forward three or four times during his watch to see that the look-out man was doing his duty, and that there was nothing disorderly going on forward. Moreover all the hands were detailed to their respective boats, and every week they were exercised in boat and fire drill. An attempt was made to shew that there were irregularities going on that night on board amongst the passengers, that they had had theatricals, and it was intimated that probably the chief officer had been taking part in them, and that he was consequently unfit to perform his duty.

All these charges have, however, completely broken down. It is true that there was dancing going on from six to eight, but at 8 p.m. the decks were cleared, and the single women locked up in their quarters; and although some of the men seemed to have remained about the deck until nearly midnight, there is no evidence of even the slightest irregularity on board. As to Cottrell, the chief officer, all that could be said against him was that, when he got on board the "Ada Melmore," he seemed to be sleepy and tired, and that, on the master of the "Ada Melmore" noticing it, Cottrell stated that he had been up since four the previous morning. The chief officer, however, denies that any such conversation took place, or that he had been up since that hour; but that he was drowsy and sleepy can hardly be wondered at, seeing that he had been in the water for something like three-quarters of an hour, during part of the time supporting a little boy, who had been torn out of his arms by a shark, and that before the boat had picked him up he had begun to lose consciousness; there is, therefore, some reason to think that when he got on board the "Ada Melmore" he may have been fagged and tired out. On the other hand, let us look at the case of the "Ada Melmore." She was sailing without her side lights, it being, it seems, her practice to do so, and one of them at least was in such a state that it could not be properly lighted. And whilst sailing along in this way, the chief officer leaves the deck, and when he sees the green light of the "Kapunda" appear he puts his helm hard down and ports into it. The contrast between the witnesses is equally striking; the evidence from the "Kapunda" is clear and consistent, that from the "Ada Melmore" is confused and contradictory.

The last question on which our opinion has been asked is, "Whether the chief officer of the 'Kapunda,' and the master and officers of the 'Ada Melmore,' are, or either and which of them is, in default?" and it is added that, "in the opinion of the Board of Trade, the certificates of the chief officer of the 'Kapunda,' and the master, chief and second officers of the 'Ada Melmore,' should be dealt with." As regards the chief officer of the "Kapunda," there is no fault to find with him, for no one could have behaved better than he seems to have done throughout. We shall, therefore, not deal with his certificate. But as regards the master of the "Ada Melmore," we have great fault to find with his conduct; he should on his arrival at Valparaiso have replaced the screen on the port bow, and have renewed his stock of paraffine oil; but what we chiefly blame him for is for not carrying his side lights as required by the Regulations for Preventing Collisions at Sea. He told us that the usual practice on board his vessel, and, indeed, the usual practice on board all cargo vessels, was not to carry the side lights when the weather was clear and fine, and when they were out of the track of shipping. Now we do not believe that to be the practice on board cargo vessels generally, although it may have been the practice on board his own vessel; but even if it were, it would be no justification to him for so flagrant a dereliction of duty. The master, however, seems to have improved even upon his own practice, for not only did he not carry them in fine weather, and when out of the track of shipping, but likewise when the weather was stormy, with heavy rain, and when he was

in the track of shipping. The result has been the loss of two valuable ships and their cargoes, and nearly 300 lives. So gross a dereliction of duty deserves at the hands of the Court exemplary punishment. We are told that this man has been 35 years at sea, 14 years a master, and 7 years in the employ of his present owners, and for two years in command of this vessel, and that he has never before met with any casualty. But if so, and if his practice has been what he says it is, not to carry his lights at night, we can only say that his freedom from accident must be due rather to good luck than to good management. We have had some doubt whether we ought not to cancel this man's certificate, but that is the utmost which the law would permit us to do to him had he wilfully run away from the "Kapunda" and left all her people to perish. What we shall do is to inflict upon him the next most severe punishment which we can inflict, and that is to suspend his certificate for two years. A question was raised by one of the assessors, whether we ought not to deal with the certificates of the officers also, for not having remonstrated with the master for his persistent neglect of duty in omitting to carry his side lights, as required by the Regulations. But apart from the question whether we have any power to deal with their certificates on that ground, we are unwilling to do anything which would seem to shift the responsibility from the master's shoulders and to divide it between himself and his officers. He, and he alone, is in our opinion to blame for this grave neglect of duty, and the punishment should therefore fall upon him. As regards the chief officer of the "Ada Melmore," no doubt he is to blame for having put his helm hard down when he saw the green light of the "Kapunda" appear, and knew therefore that she had starboarded her helm. It was a most unseamanlike act; at the same time, this Court has always held that in cases of collision, when an

officer is placed in a position of great difficulty, and is obliged to act upon the spur of the moment, any act that he may do is to be regarded as due rather to error of judgment than to wilful neglect or default. His act in putting his helm hard down was no doubt a very grave error of judgment, but hardly amounts to wilful default or neglect, for which alone this Court would be justified in dealing with his certificate.

On the application of counsel for Captain Millikin, the Court agreed to recommend to the Board of Trade that during the suspension of his master's certificate he should be allowed a chief mate's, being unwilling to deprive him altogether of earning his livelihood, and thinking that it would hardly conduce to make him a more careful and prudent navigator by keeping him on shore during the suspension of his master's certificate. And if he does get employment, his degradation from the position of master to that of mate is no light punishment.

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

We concur.

(See Rider) (Signed) R. METHVEN,
ALFRED PARISH, } Assessors.
C. V. CURME,

Rider.

I have been permitted to add as a rider to my signature to the Report, that I think the conduct of the captain of the "Ada Melmore" deserves more severe punishment than that awarded by the Court; that the certificate of the captain should have been cancelled, and the certificates of the chief and second officers of the "Ada Melmore" suspended.

R. METHVEN.

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