

Tuesday, June 1.

SECOND DIVISION.

[Justice of Peace Court,
Lanarkshire.]

EWER v. BOARD OF TRADE.

Shipping Law—Master—Neglect of Duty.

Circumstances in which a master's certificate was suspended on the ground that he had neglected his duty.

The certificate of William Ewer, master of the steam-ship "Carfin," Glasgow, having been suspended for six calendar months after formal investigation under the Merchant Shipping Acts 1854 to 1876, on the ground that from want of proper and seamanlike care the ship had been stranded on the Gantock Rocks off Dunoon, Firth of Clyde, on or about 20th March 1880, he appealed to the Court of Session under section 2 of the "Shipping Casualties Investigation Act 1879," 42 and 43 Vict. c. 72, and the Shipping Casualties (Appeal and Rehearing) Rules 1880, craving that the decision pronounced in the investigation, so far as it suspended his certificate, should be recalled.

The said investigation was held at Glasgow on the 22d, 23d, and 26th of April 1880 before two of Her Majesty's Justices of the Peace for Lanarkshire, assisted by two nautical assessors, and after evidence had been adduced by the Board of Trade the Court found—"(1) That at the time the master left the vessel in charge of the first mate, when passing the Cloch Light, a proper course had been set, but was not afterwards steered.

"(2) That the master was not on deck at all times when the safety of the vessel required his personal supervision, inasmuch as he left the deck while the vessel was in a narrow channel in somewhat hazy weather.

"(3) That the master was not justified in leaving the bridge in charge of the first mate at the time and in the circumstances in which he did.

"(8) That the vessel was not navigated with proper and seamanlike care."

The circumstances with reference to which these findings were given were as follows:—The iron screwsteam-ship "Carfin," left Glasgow on the 19th March 1880, at about 11.30 p.m., bound for Bilbao. She was under the command of William Ewer, who held a master's certificate of competency, and who had very considerable experience in the navigation of the Clyde. Her crew consisted of 24 hands, including the master and two mates, who also held certificates from the Board of Trade. After the pilot had been discharged at Greenock at 3 a.m. on the 20th March, the master himself took full charge of the vessel, as no watches had been set up to that time, and the vessel steamed down the river on a flood tide at about 8½ knots an hour, the weather being somewhat hazy. After passing Gourrock Point she came abreast of the Cloch Light at 3.56 a.m. The channel at this point is a narrow one, the distance between the Cloch and the Gantocks being a mile and a quarter. The first mate now informed the master that there was something wrong with the second mate, who was below in his cabin in an apparently stupid condition. Determining to summon that

officer himself, the master left the first mate in charge of the vessel, ordering him to keep the ship's head steady, as she was then going S.S.W., which was the proper and safe course to steer down the river, and then went below. In 4 or 5 minutes he returned, and as he was at the foot of the bridge he heard the look-out man forward call out that the vessel was on a beacon, and at the same moment the mate called out to port the helm. On reaching the bridge he found the engines had been stopped, and he ordered them to be reversed at full speed. A few moments after the vessel struck on the Gantock Rocks off Dunoon, and when she was got off on the 25th March she was found to be materially damaged.

Their Lordships, who on hearing the case were assisted by two nautical assessors, unanimously affirmed the judgment appealed against, expressing an opinion that while peculiar circumstances might occasionally, as in this case, press hardly on a good seaman, it would be inexpedient to relax the general rule of law, that as life and property depend on the proper and skilful management of the ship, the officer in charge at the time must not when the weather is hazy or the channel narrow leave his post unless compelled by unavoidable necessity.

Counsel for Appellant—Asher—A. J. Young.
Agent—A. Duncan, S.S.C.

Counsel for Respondents—Solicitor-General (Balfour)—Trayner. Agent—David Turnbull, W.S.

Friday, June 4.

SECOND DIVISION.

[Lord Rutherford Clark,
Ordinary.]

SINCLAIR, MOORHEAD, & COMPANY v.
WALLACE & COMPANY.

Agent and Principal — Powers of General Manager.

An agent invested with all the general powers of agents managing a mercantile business, borrowed on the credit of his employers a sum of money for which he granted a bill of exchange blank in name of the drawer, accepted by him *per pro.* of his employers, and antedated six months prior to date of loan. In a suspension of a charge to pay the same brought by the principals, *held (rev. Lord Rutherford Clark)* that in the absence of express powers to borrow, a general agent representing the firm has no implied powers of so extensive a character and charge suspended.

Agent and Principal — Fraud — Benefit to Principal.

L., a general agent for a mercantile firm, received a loan of a sum of money for which he gave a bill of exchange, accepted by him *p. pro.* of his employers. He then handed the sum so obtained to T. in part payment of a larger sum borrowed from him, and placed the balance so borrowed to the credit