
(1879) 07 CAL CK 0003

Calcutta High Court

Case No: None

In Re: "the Ava" and
"the Brenhilda"
Government of
Bengal

APPELLANT

Vs

RESPONDENT

Date of Decision: July 28, 1879

Acts Referred:

- Merchant Shipping Act, 1862 - Section 23

Citation: (1880) ILR (Cal) 453

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

In this case, the Advocate-General, on behalf of the Lieutenant-Governor of Bengal, applied to the Court, in its Admiralty Jurisdiction, u/s 5 of Act IV of 1875, to investigate charges of misconduct or incompetency against Thomas W. Whittard, second mate of the steamship Ava, holding a Board of Trade certificate as master, and against John Scurr, master of the sailing ship Brenhilda, holding a like certificate. The application was made upon a petition, which states, amongst other things, that a collision took place on the 24th of May 1879, in the Bay of Bengal, between the two ships in question; that the mate Whittard was in charge of the Ava at the time, and that Scurr was the master of the Brenhilda; and the charges stating the specific acts of misconduct or incompetency alleged against each were annexed to the petition.

2. On the 10th of July an order was made appointing the 22nd of July for the investigation, and directing summonses to be served upon the two persons charged, and further directing copies of the petition and charges to be served upon them, with liberty to any party to apply for extension of time.

3. On the 22nd July, Whittard, the mate of the Ava, appeared by counsel, and objected to the jurisdiction of the Court. Scurr, the master of the Brenhilda, appeared in person, and stated that he wished to take no part in the proceedings at this stage, but to leave the question of jurisdiction in the hands of the Court.

4. The question of jurisdiction was argued by Mr. Woodroffe and Mr. Jackson, on behalf of the mate of the Ava, and by the Advocate-General and the Standing Counsel on the other side. What is now to be decided is, whether this Court has jurisdiction to hold the investigation ordered. For the purpose of determining this question, I propose: (1) to consider briefly what the previous course of legislation upon the matter has been; (2) to examine the language of the Act under which these proceedings have been instituted; (3) to deal in detail with the several objections raised to the jurisdiction in this case. The Act now in question is, so far as India is concerned, the last of a series dealing with the same subject-matter. Those Acts, so far as it is necessary to consider them for the present purpose, deal with three things: (a) inquiries into charges of misconduct on the part of masters and others holding certificates, which misconduct may or may not be connected with wrecks or other casualties; (b) inquiries into wrecks and other casualties, which inquiries may or may not involve charges of misconduct; (c) the cancelling or suspension of certificates as the result of either kind of inquiry.

5. It must be observed also, that two kinds of certificates are dealt with: Board of Trade certificates granted under the Merchant Shipping Acts of the United Kingdom; and certificates of Local Governments under the Indian Acts.

6. The first Act to be considered is the Imperial Merchant Shipping Act of 1854 (17 & 18 Vict., c. 104). In Part III of that Act, entitled "Masters and Seamen," Section 240 empowers a Court of Admiralty, in certain cases, on the application of certain persons, summarily to remove a master; Section 241 enacts, that, if the Board of Trade, or any Local Marine Board, has reason to believe that any master or mate is, from incompetency or misconduct, unfit to discharge his duties, the Board of Trade may either institute an investigation or may direct the Local Marine Board to institute the same." The section goes on to provide for the constitution of the tribunal, the summoning of the accused, and his making his defence; and proceeds,--" and thereupon such investigation shall be conducted, and the result thereof reported, in the same manner and with the same powers, in and with which formal investigations into wrecks and casualties are directed to be conducted, and results thereof reported under the provisions of the eighth Part of this Act."

7. In Part VIII of the Act, entitled "Wrecks, Casualties, and Salvage," Section 432 enacts, that, "in any of the cases following (that is to say) whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom; whenever any ship causes loss or material damage to any other ship on or near such coasts; whenever, by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues; whenever any such loss,

abandonment, damage or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the United Kingdom," certain local officers may hold a preliminary inquiry. By the following sections a formal investigation may be ordered; the Court to make it is prescribed; and the Court is required to report to the Board of Trade. For the power to suspend or cancel certificates it is necessary to turn back to Section 242, which empowers the Board of Trade to do so in five cases: "(1)--If upon any investigation made in pursuance of the last preceding Section (that is, an investigation into charges of incompetency or misconduct) he (the certificate-holder) is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny; (2)--If upon any investigation conducted under the eighth Part of this Act, or by a Naval [460] Court, it is reported that the loss or abandonment of, or serious damage to, any ship or loss of life has been caused by his wrongful act or default: (3)--If he is superseded by the order of any Admiralty Court or any Naval Court; (4)--If he is shown to have been convicted of any offence; (5)--If upon any investigation made by any Court or tribunal authorised or hereafter to be authorised by the legislative authority in any British possession, to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss of, or any serious damage to, any ship, or loss of life has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the Government of such possession."

8. The same subjects are dealt with by the Indian Act, I of 1859. Section 80, closely following Section 240 of the English Act, gives Courts of Admiralty the power of summarily removing a master in certain cases, and on the application of certain persons. Section 81 following Section 241 of the English Act, says: If the Local Government... has reason to believe that any master or mate, who has obtained a certificate of competency or service from such Government, is from incompetency or misconduct unfit to discharge his duties, it may direct any Board or officer at or near to the place, at which it may be convenient for the parties and witnesses to attend, to institute an investigation, and thereupon such Board or officer shall conduct the investigation, and may summon the master or mate to appear, and shall give him full opportunity of making a defence either in person or otherwise, and shall, on the conclusion of the investigation, make a report upon the case to the Local Government."

9. Section 100, following in the main the analogy of Section 432 and following sections of the English Act, provided for inquiries into wrecks and other casualties. It enumerated the casualties to be dealt with, provided for notice of their occurrence, and proceeded: "It shall be lawful for the Local Government, whether such notice be given or not, if a formal investigation appears to it to be requisite or expedient, to appoint two persons to make the same. The investigation shall be held at such place

as the Local Government shall deem best for the convenient examination of the witnesses. One of the persons to be so appointed shall be a Magistrate, acting in or near the place where the investigation is held, the other may be any person conversant with maritime affairs." Section 101 conferred the necessary powers upon the tribunal so formed: and Section 102 directed it to report to the Local Government.

10. For the powers of suspending or cancelling certificates of the Local Government we must turn back to Section 82. The Local Government by that section could cancel such certificate held by any master or mate: (1) if, upon an inquiry u/s 80, he were reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness or tyranny; (2) if, upon an investigation u/s 100 and the following sections, it were reported that the loss or abandonment of, or any serious damage to, any ship, or loss of life, had been caused by his wrongful act or default; and in certain other cases corresponding with those in Sections 3, 4, and 5 in the section of the Merchant Shipping Act.

11. The next enactment is Act XXVIII of 1861. It recited Section 242 of the Merchant Shipping Act, 1854, by which the Board of Trade could cancel its certificates upon the report of "any Court or tribunal authorised or hereafter authorised by the Legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships;" and Section 82 of the Indian Act, I of 1859, by which the Local Government could cancel its certificates upon a like report of a similar tribunal. It further recites, that it is expedient to authorise Courts or tribunals in India to make such inquiry and report. Section 1 then enacted that: "Every Court, having admiralty jurisdiction in India, and the principal Court of ordinary criminal jurisdiction at every port in India where there is no Court having admiralty jurisdiction, is hereby authorised to make inquiry into charges of incompetency or misconduct on the part of any master or mate of any ship, whether such master or mate shall have obtained his certificate from the Board of Trade or from any Local Government, or as to shipwrecks or other casualties affecting ships." The section goes on to say, that, in case certain kinds of misconduct appear, the Court is to report to the Local Government. The same Act, Section 3, gave to Criminal Courts, where there was no Admiralty Court, the power of summarily removing a master, conferred upon Admiralty Courts in Section 80 of Act I of 1859.

12. The Act made several important charges: first, though there was before power, in a tribunal constituted u/s 81 of Act I of 1859, to investigate charges of misconduct against persons holding Local Government certificates, and in those u/s 100 and the following sections, to inquire into wrecks and casualties, including of course, the power to investigate charges of misconduct incidentally arising, there appears to have been no Court in India empowered to investigate charges of misconduct generally against holders of Board of Trade certificates; secondly, this Act, for the

first time, gave to Courts of Admiralty and Criminal Courts the power of holding such inquiries, and those of both kinds--inquiries into charges of misconduct, and inquiries into wrecks or casualties.

13. The next change of importance in the law was by the Imperial Act, 25 and 26 Vict., Cap. 63, the "Merchant Shipping Act Amendment Act, 1862." Hitherto the Board of Trade had itself cancelled its own certificates upon the report of the appropriate tribunal. Section 23 of this Act enacted that: "The power of cancelling or suspending the certificates of a master or mate by the 242nd section of the principal Act [that is the Act of 1854] conferred on the Board of Trade, shall [with an exception not here material] vest in and be exercised by the Local Marine Board, Magistrates, Penal Court, Admiralty Court, or other Court or tribunal by which the case is investigated or tried, and shall not in future vest in or be exercised by the Board of Trade." The rest of the section need not here be noticed.

14. The next Act is the Indian Act, XV of 1863. It repealed Sections 81 and 82 of Act I of 1849, relating to investigations of charges and the cancellation of certificates, and the whole of Act XXVIII of 1861; and made some provisions on the subject. Section 100 and the following sections of the Act of 1859, as to inquiries into wrecks and casualties, it left standing.

15. It enacted by Section 4, that "every Court of admiralty jurisdiction in India and the principal Court of ordinary criminal jurisdiction at every port in India, where there is no Court having admiralty jurisdiction, is hereby authorised to investigate and try charges of incompetency or misconduct on the part of any master, mate, or engineer of any ship, who shall have obtained his certificate from the Board of Trade, and to make inquiry as to shipwreck or other casualties affecting ships;" and the section goes on to empower those Courts to cancel or suspend such certificates. There were various conditions and restrictions upon this power, which it is not necessary here to consider.

16. Section 6 provided for the investigation of charges against holders of Local Government certificates. The Local Government might direct any Board or officer to institute an investigation. But such tribunal could not cancel or suspend the certificate; its duty was to report to the Local Government. These are all the Acts necessary to be noticed before that of 1875, which is the one governing the present case. The result is that, immediately before that Act passed, the law appears to have stood thus.

17. A principal Court, formed u/s 100 of Act I of 1859, could enquire into wrecks and casualties of the kinds enumerated in that section, and must report to the Local Government. If its report inculpated the holder of a Local Government certificate, the Local Government could cancel or suspend the certificate.

18. If the report of the special Court inculpated the holder of a Board of Trade certificate, the power to cancel or suspend depended not on any Indian Act but on

the Merchant Shipping Acts. The Board of Trade could not cancel such certificate, because Section 23 of the Merchant Shipping Act, 1862, took away the power. The Local Government never had any such power. The power rested in the special Court itself, which, being a Court authorised by the Local legislature to enquire into wrecks and casualties within the meaning of Section 242 of the Merchant Shipping Act, 1854, had, by the joint effect of that section and Section 23 of the Act of 1862, authority to cancel Board of Trade certificates subject to the restrictions therein laid down.

19. Admiralty Courts, and in their absence Criminal Courts, had authority, u/s 4 of the Indian Act of 1863, to investigate against holders of Board of Trade certificates; and, both under the Merchant Shipping Acts and that Act, had power, if necessary, to cancel or suspend their certificates. The same Courts had, under the same section, power to investigate "as to shipwrecks or other casualties affecting ships." The meaning of these words is not by any means clear, and as I shall have in another connection to consider the same words as they occur in the present Act, I pass them by here. A Board or officer, u/s 6 of the same Act, could investigate like charges against the holder of a Local Government certificate, and, on their report, the Local Government could cancel or suspend the certificate.

20. I have omitted to notice the changes in the English and in the Indian legislation which have extended the jurisdiction of different Courts to engineers as well as masters and mates, because they do not affect the present inquiry.

21. In this state of things the present Act IV of 1875, was passed. It repeals Sections 100, 101, and 102, of Act I of 1859, and Act XV of 1863;--that is to say, it repeals the whole Indian Statute law relating to investigations into charges against the holders of certificates, whether of the Board of Trade or the Local Government; to inquiries into wrecks and casualties; and to cancellation and suspension of certificates of either kind, with the exception of Section 80 of Act I of 1859, which enables Courts of Admiralty; in certain cases, and upon the application of certain persons (of whom the Local Government is not one), to remove a master; which power was, by Section 3 of Act XXVIII of 1861, and is now, by Section 23 of the present Act, extended to Criminal Courts.

22. The material provisions of the Act are as follows:

23. Section 3 specifies certain cases of casualty as follows:

(a) Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of India.

(b) Whenever any ship causes loss or material damage to any other ship on or near such coasts.

(c) Whenever, by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues.

(d) Whenever any such loss, abandonment, damage or casualty happens elsewhere to or on board any ship registered at any port or place in India under the Merchant Shipping Act of 1854, or under Act X of 1841, the section requires notice to be given of any such occurrences.

24. By Section 4, "if in any such case a formal investigation appears to the Local Government to be requisite or expedient, the Local Government (whether such notice be given or not) may appoint a special Court consisting of not less than two, nor more than four, persons, to make such investigation, and may fix the place for making the same.

One of such persons shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

25. Section 5 provides for investigation into charges against holders of Board of Trade certificates.

26. By it "every Court having admiralty jurisdiction in India, and the principal. Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorised, at the instance of the Local Government, or of such officer as the Local Government may have empowered in this behalf, to investigate charges of incompetency or misconduct on the part of any master, mate, or engineer of any ship, who holds a certificate granted by the Board of Trade, or as to shipwreck or other casualties affecting ships.

Every such Court may, if it think fit, constitute as its assessor for the purposes of the investigation any person conversant with maritime affairs and willing to act as such assessor.

Such person shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings. But the decision of the case shall rest with the Court.

27. The other sections material to be considered are Sections 6 to 15, both inclusive. By Section 6, "if the Local Government has reason to think that there are grounds for charging any master, mate, or engineer, holding a certificate granted by the Board of Trade, with incompetency or misconduct, it shall transmit a statement of such grounds to the Court making the investigation."

28. By Section 7, "if the investigation involves a charge of incompetency or misconduct against any person holding such certificate as aforesaid, the Court shall, if practicable, before commencing the investigation, cause the holder of such certificate to be furnished with a copy of the statement transmitted by the Local Government as aforesaid."

29. By Section 8, "for the purpose of the investigation, the special Court, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have the same powers as if such investigation were a proceeding relating to an offence or cause of complaint upon which the said Magistrate has power to convict."

30. By Section 9, "if, in the course of an investigation under this Act, by any of the Courts hereinbefore mentioned, it appears that there are grounds for charging with incompetency or misconduct any holder of such certificate as aforesaid, not so charged by the Local Government, the Court may cause a statement of such grounds to be furnished to such holder, and may then commence an investigation into such charge of incompetency or misconduct."

31. By Section 10, "for the purpose of such investigation, such Court may summon the master, mate, or engineer to appear, and shall give him full opportunity of making a defence, either in person or otherwise, and may summon and examine witnesses."

32. By Section 11, "the Court shall in all cases transmit to the Local Government a full report of the conclusions at which it has arrived."

33. By Section 12, "if the Court decide that any such certificate as aforesaid shall be cancelled or suspended, it shall so state in open Court, at the conclusion of the case, or as soon afterwards as possible."

34. By Section 13, "when the Court decides to cancel or suspend a certificate, it shall send a full report upon the case with the evidence and the suspended or cancelled certificate through the Local Government to the Board of Trade."

By Section 14 "it is provided that no certificate shall be cancelled or suspended:

(a) Unless the person holding the certificate has, before the commencement of the investigation, been furnished with a copy of the statement of the case upon which the investigation has been ordered.

(b) If the Court be a Court of admiralty or of ordinary criminal jurisdiction, unless the report be confirmed by the Local Government.

(c) If the Court be a Court of admiralty or of ordinary criminal jurisdiction attended by an assessor, unless the assessor expresses his concurrence in the report.

35. Now, u/s 5, it seems clear at first sight that this Court, as a Court having admiralty jurisdiction, has authority, at the instance of the Local Government, to investigate charges such as the present.

36. It has, however, been argued broadly that this is not the case. Mr. Woodroffe contended that Sections 3 and 4 are the governing sections of the Act, Section 3 determining the matters that may be investigated, Section 4 the tribunal which is

ordinarily to investigate them; that Section 5 is in a sense, parenthetical, empowering the Local Government, in case of need, to substitute an Admiralty or Criminal Court for the special Court provided by Section 4; and that all the later sections apply only to inquiries within the scope of Sections 3 and 4.

37. I cannot agree in this construction. It would run counter to the whole course of the legislation on these subjects both in England and in India. Investigations into misconduct of persons holding certificates, and inquiries into wrecks and casualties have always been treated as different things. It would equally do violence to the language of the section itself; which, following the language of the earlier law on the same subject, and differing entirely from that of Sections 3 and 4, speaks of investigations into charges of incompetency or misconduct.

38. Further, Mr. Woodroffe's construction would lead to the somewhat serious result, that however grave might be the reasons for imputing misconduct or incapacity to the holder of a Board of Trade certificate navigating in Indian waters, the Local Government could not interfere to prevent disaster, but must wait till a catastrophe has actually occurred.

39. It was sought to strengthen the argument against the jurisdiction by the contention that the investigation if held must be fruitless, inasmuch as no power was given to suspend or cancel the certificates of the persons charged. I do not think this is so.

40. I think Section 242 of the Merchant Shipping Act of 1854 followed by Section 23 of the Act of 1862, confers the power on such Court as may for the time being be authorised by the Local Legislature to enquire into charges of misconduct.

41. And, accordingly, the Indian Act gives this Court the power to hold such inquiries, but does not confer in terms any power to cancel. It assumes the existence of the power, and goes on to prescribe the mode and the conditions of its exercise. In my opinion, Section 5 does authorise this Court to investigate charges of incompetency or misconduct against holders of Board of Trade certificates totally distinct from any power in any tribunal to enquire into wrecks or casualties. The mere general objection to the jurisdiction must therefore fail.

42. Before leaving this part of the subject, I think it right to notice a view contended for by the Advocate-General. He argued that all the sections in chap. ii of the Act subsequent to Section 5, apply only to enquiries u/s 5; and that the Courts mentioned in that section are the only Courts that can cancel a Board of Trade certificate, or report, so as to enable the Local Government to cancel its own certificate. In this view I do not concur. It is at variance with the whole previous course of legislation, and it does great violence to the language of the sections in question. I think those sections apply, as their language indicates," to both Courts, except so far as some of them in terms apply specially to one or the other; and I entertain no doubt that a special Court, inquiring into a casualty u/s 2 has power, if

all the provisions of the Act are duly complied with, to cancel a Board of Trade certificate, or to make a report to the Local Government, upon which the Government may cancel its own certificate u/s 18.

43. A further objection was taken, that what was stated in the petition as to the place of the collision, excluded, or at all events was insufficient to found jurisdiction in the Court. The misconduct charged is in connection with a collision stated to have occurred "in the Bay of Bengal." It was argued that the restriction as to the place expressed in Section 3 in which (except in the case of ships registered in India) the casualties which can be inquired into must have occurred "on or near the coast of India" is to be imported into Section 5.

44. I do not think this is so. I have already shown that Section 5 comes from a different root from Sections 3 and 4, and belongs to a distinct branch of legislation. In none of the previous sections, English or Indian, dealing simply with the investigation of charges of misconduct against holders of certificates, has the jurisdiction been made to depend on the place of the alleged misconduct, and the present section uses the same language. The true limitations of this jurisdiction are easily to be gathered from the Act itself.

45. First, by Section 5, the person charged must be the holder of a Board of Trade certificate; secondly, by Section 10, he must be summoned: he must, therefore, be at the time within the local limits in which the process of the Court can be served. There is a third practical limitation prescribed not by the terms of the Act but by the necessity of the case. The investigation can, of course, only be held when evidence is procurable.

46. An argument was, however, founded upon the subsequent words of the section "or as to shipwreck or other casualties affecting ships." It was said that these words send us back to Section 3, and import the local restrictions of that section into Section 5. The words referred to are undoubtedly very difficult to construe, but I do not think they have the effect suggested. It is easy to see how they found their way into the Act; they are derived from Section 242, Sub-section (5) of the Merchant Shipping Act of 1854. Section 241 of that Act provided for the trial of charges of misconduct duly limiting the jurisdiction by reference to the parties charged, holders of Board of Trade certificates. Section 432 of the same Act provided for inquiries into wrecks and casualties, limiting the jurisdiction more or less clearly, mainly by reference to the place of the occurrence.

47. The Imperial Legislature, assuming that Local Legislatures, would in like manner provide for both classes of inquiries, enacted in Section 242, that the Board of Trade might cancel certificates upon the report of "any Court or tribunal authorised by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships." The Indian Acts of 1861, 1863, and

1875, with more attention perhaps to the words than the meaning of this section, have empowered Admiralty and Criminal-Courts to investigate charges against holders of certificates "or as to shipwreck or other casualties affecting ships "; without in the latter case defining the jurisdiction in any way whatever, though the same Legislature, dealing with inquiries by special Courts, has defined the like jurisdiction by reference to place or the character of the ship, both in the Act of 1859 and the present Act. Some restriction must be put upon the words to satisfy the well-known rule of construction that the Acts of any legislature prima facie apply to persons, things, or subject-matters within its jurisdiction, not to those without; and to avoid manifest absurdity. But what the restriction should be is not easy to say. It is possible that the words mean wrecks and casualties of the kinds otherwise the subject of inquiry that is, those mentioned in the earlier sections. It may be, and this I am inclined to think is the case, that these words are limited by those that go before, and that Admiralty and Criminal Courts can enquire into wrecks and casualties only when connected with charges of misconduct against holders of Board of Trade certificates.

48. It is not, however, necessary to decide this. What is necessary, is to say that, in my opinion, whatever the meaning of the words may be, they do not restrict the jurisdiction given by those that go before.

49. If it had been necessary to give jurisdiction that the matter in question should have occurred on or near the coast of India, I think the words "in the Bay of Bengal" would have been too wide, and I should at least have required further information before proceeding with an inquiry. But statements were made in argument as to the actual place of the collision. And I wish to guard against suggesting any doubt that the collision did in fact occur near the coast of India within the meaning of the Act, or any doubt that the inquiry which has been held was properly held.

50. It is next contended that the jurisdiction of this Court is ousted by reason of what took place upon the former inquiry. With regard to that, all that appears is on the face of the petition itself. It states that "upon the arrival of the said sailing-ship (i.e., the *Brenhilda*) in Calcutta, an investigation was directed by the Lieutenant-Governor of Bengal to be held into the circumstances of the said collision, and that such investigation being made by a Court of Enquiry, the proceedings thereof were reported to the Lieutenant-Governor, but no charges were preferred by the said Court against individuals."

51. I agree with what has been contended for the mate of the *Ava*, that these are proceedings of a penal character, and that the general principle applies to such cases; that a man who had been once charged with an offence, and acquitted or convicted, cannot be tried again for the same offence. But I do not think the facts of this case, so far as appear, bring them within the principle. I have already shown that the two kinds of inquiry--those into wrecks or casualties, and those into charges of misconduct--are distinct from one another. An inquiry into wreck may become an

inquiry into misconduct. It may do so in the case of the holder of a Board of Trade certificate in either of two ways. The Local Government, u/s 6, or the special Court itself, u/s 9, may frame charges against such a person; he may be served with a copy of the charges and summoned to answer them. Unless this be done, there is, in my opinion, no charge against him; he has nothing to answer, and is in danger of no penal consequences.

52. It must be observed that, besides the power of framing charges of misconduct and proceeding to try them, the special Court may also, u/s 16, if the facts require it, commit any person for trial on a criminal charge. If the view contended for be sound, it would seem to follow that the fact of a special Court not having committed any person for trial, would be a bar to any criminal charge against any person whomsoever in connection with a casualty.

53. The inquiry of the special Court into a wreck seems to me closely analogous to a coroner's inquest in case of death.

54. The inquest may result in a criminal charge. But it could not be contended that if it did not, no one could ever be criminally charged for the death.

55. I think, therefore, there is nothing on the face of the petition to show that the previous inquiry is any bar to that now asked for.

56. The remaining objections have to do with the procedure adopted in this matter.

57. It is said that the proceedings have not been instituted by proper authority; that u/s 5 the application to the Court must be either by the Local Government itself or by some officer in the permanent service of the Local Government having a general authority to institute such proceedings; whereas the Advocate-General is an officer of the Government of India and holds no such general authority. I do not so read the section. The Advocate-General is an officer, and the petition states that he is empowered by the Lieutenant-Governor to apply to the Court. And this is all that the words of Section 5 require. Moreover, if this were not a good application by an officer, it sufficiently appears from the petition that the Court is put in motion at the instance of the Lieutenant-Governor, and that satisfies the Act.

58. It is said also, that the petition is wrongly instituted, inasmuch as the Acts on which the jurisdiction depends are not referred to. It was urged, and I think rightly, that, in penal matters, the prescribed procedure must be strictly followed. But I find nothing in the Act requiring the application to be made in any prescribed form of words. It was further contended that Sections 6 and 7 of the Act have not been complied with; that a sufficient "statement of the grounds" for charging the persons involved, has not been transmitted to the Court, or furnished to them.

59. What has taken place in this: a petition was presented to the Court by the Advocate-General on behalf of the Lieutenant-Governor, with the charges against the persons implicated annexed to it. They state the fact of the collision between the

two ships, the Ava and Brenhilda, and the particular acts of misconduct and incompetency alleged against each person. I think what has been furnished is as much as under Sections 6 and 7 the Local Government is required to transmit to the Court, and the Court to the persons charged.

60. Moreover, if these documents were insufficient, I do not think the objection would be one to jurisdiction strictly,--that is to say, I do not think the transmission of the statement is a condition precedent to the Local Government's applying to the Court or to the Courts during an investigation; though the omission would be good ground for not commencing the investigation until it was made good.

61. But there are two other sections to be considered--s. 25, Sub-section (6), of the Merchant Shipping Act of 1862, and Section 14, Sub-section (a), of the Indian Act in question. The first says, that "no certificate shall be cancelled or suspended under this section, unless a copy of the report, or a statement of the case upon which the investigation is ordered, has been furnished to the owner of the certificate before the commencement of the investigation." The second says, that "no certificate shall be cancelled or suspended unless the person holding the certificate has, before the commencement of the investigation, been furnished with a copy of the statement of the case upon which the investigation has been ordered."

62. The conditions of both sections are, in my opinion, binding upon this Court. The point does not go strictly to jurisdiction, but if there be a failure to comply with either section, no certificate can be cancelled or suspended.

63. I further think that the word "ordered" in those sections means, not ordered by any Court, but ordered in England by the Board of Trade; in India by the Local Government.

64. Now, the section of the Merchant Shipping Act which I have read requires, that, before the inquiry commences, a copy of the report, or a statement of the case upon which the investigation has been ordered, should be furnished to the persons charged; which means, in my judgment, a copy of the report if it be a report, a statement of the case if the case be not embodied in a report. In this case, it appears on the face of the petition, that the proposed inquiry was ordered by the Lieutenant-Governor upon the ground of the report of a special Court. I think, therefore, that the furnishing of copies of that report to the persons charged before the investigation commences, is a condition precedent to the Court's cancelling or suspending their certificate.

65. The result is that, in my opinion, the objections to the jurisdiction fail, that the Court has power to make the investigation asked for, and that it should be held accordingly. But I also think it would be a futile inquiry, and could not usefully be held, unless the condition I have mentioned be complied with, if it has not been done already.