At Newcastle, Shields, and Sunderland, it was formerly compulsory on foreign ships, *i.e.*, ships with foreign nationalities; but this has been altered under the Reciprocity Treaties, and it is now entirely voluntary. At Cork it is voluntary.

In the British Channel it is compulsory, as above stated, on ships bound for foreign ports to Bristol: but by "The Bristol Channel Pilotage Act, 1861," which took away from Bristol the management of pilotage for the Bristol Channel generally, pilotage for the ports of Cardiff, Newport, and Gloucester, which had previously been compulsory, was made entirely optional.

The pilotage at Leith has been made voluntary by an Order in Council dated 30th June, 1860.

On the whole there can be no doubt that the tendency of recent legislation, local as well as general, has been to relax compulsory pilotage.

In order to complete this outline of the law of compulsory pilotage it is necessary to notice one of its most important consequences, viz., the exemption of the shipowner from liability for damage done by his ship when the ship is placed in charge of a pilot by compulsion of law.

The first enactment on the subject was the 52 Geo. III., cap. 39, sec. 30. (in 1812)—*

"No owner or master of any ship shall be answerable for any loss or damage for or by reason or "means of any neglect, default, or incompetency of any pilot *taken* on board of any such ship, *under or* "*in pursuance of any of the provisions of this Act.*"

The Pilot Act of 1825-6, Geo. IV., cap. 125, which repealed the former Act, contained a section (sec. 55) in nearly the same terms. It exempted the owner from responsibility, not only when the fault was that of a pilot employed by compulsion of law, and also when the fault was that of a pilot acting in charge of the ship in pursuance of the Act, as explained in Lucey *v.* Ingram, 6 Meeson and Welsby 302.

This enactment was repealed by the Merchant Shipping Act Repeal Act of 1854 (17 and 18 Vict. cap. 120), and was replaced by the 388th section of the Merchant Shipping Act of that year, which is in the following words:—

"No owner or master of any ship shall be answerable to any person whatever for any loss or "damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship "within any district where the employment of such pilot is compulsory by law."

The immunity to the shipowner is confined by that section to cases in which the damage is occasioned by the fault of the pilot acting in charge, where the employment of such pilot is compulsory by law. All doubt was also removed as to the immunity being applicable throughout the United Kingdom.†

It should be added that the Law Courts, in construing this section, have felt its injustice, and have cut down the immunity as much as possible. Wherever the casualty could be traced in any degree to the act of the master and crew, they have enforced the liability of the owner, and they have thrown on the owner the burden of proving that the casualty was caused by the pilot. These decisions have narrowed the injustice caused by the section, but have probably increased litigation, since the question whether a mistake was due to the pilot or the captain or crew is one extremely difficult to determine, and very likely to be productive of false evidence.

At any rate, the effect of this law, coupled with the frequency of collisions arising from the more crowded state of our channels and harbours, and the speed of steamers, is very remarkable. If a vessel navigated by a pilot, but commanded by a master who has passed his pilotage examination, does damage, the owner is responsible. If a vessel navigated by a pilot whom, for any other reason, the owner is not obliged to employ, does damage, the owner is responsible. But if the vessel is navigated by a pilot whom the law requires him to employ, then, whether the owner would or would not, for his own sake, have employed the pilot, he is free from responsibility, and there is practically no remedy whatever for the injured party. The consequences, when followed out, are most absurd and most injurious. In a paper by Mr. Vernon Lushington, annexed to this memorandum, the legal view of the case is argued out very ably; and in Mr. Wendt's remarks on pilotage (see his recent book on Maritime Legislation, pp. 35 to 48), the practical absurdities and inconveniences are well stated. The following are some of them:—

The whole class of smaller vessels which frequent our ports, and which never need a pilot, are deprived of all remedy when in collision with a ship which is compelled by law to employ a pilot.‡

The Admiralty Court is occupied with collision cases in which the question is, not which of two ships was in the wrong, and how much she ought to pay, but whether the one ship or the other, or both, was in charge of a compulsory pilot, and whether that pilot was or was not in actual charge at the time, and committed the fault which caused the collision. ‖ This last question, as Mr. Lushington observes, is one upon which it is most difficult to get at the truth, and which must inevitably lead to endless litigation, and equally endless false swearing.

Two ships, A and B, both of the same size and description, come into London, A from the North Sea, B from the Channel. Both employ a pilot. They get into collision. If A is in fault B has a remedy; if B is in fault A has none.

Two ships, A and B, say from Leith to London, both take a pilot at Orfordness. A has passengers; B has none. They get into collision. If A is in fault, B has no remedy against A; if B is in fault, A has a remedy against B.

Two ships again, A and B bound from Havre to London, take pilots at Dungeness. The master of A has taken pains to pass a pilotage examination, and he has a pilotage certificate. The master of B has, perhaps purposely, avoided doing so. They come into collision. A has no remedy against B, whilst B has a remedy against A.

---

* See Mr. Vernon Lushington's paper annexed, from which this is taken.

† Mr. Moss, Parl. paper, 455-62, No. 95, says that before the Act of 1854, the ship was liable, but the owner was not. I can find no grounds for this assertion.

‡ See, for a list of cases of this kind, Parliamentary Paper, No. 445-62, No. 96.

‖ See, for instance of the utterly preposterous questions raised, Dr. Lushington's judgment in "Earl of Auckland," Parliamentary Paper, 455-62, No. 94.