

The object of Mr. Cardwell's legislation concerning passenger ships, viz., that of requiring, through the medium of compulsory pilotage, that masters should learn to pilot their own ships, is thus defeated. We have actually had a case in which the master of a Scotch passenger steamer asked us to contract the limits of a certificate we had granted to him, because his ability to pilot his own vessel exposed his owner to liability when in charge of a pilot.

Again, a ship bound to London takes a London pilot at Scilly or the Lizard; a very common case. For damage by collision, westward of Dungeness, the owner is liable. For damage done eastward of Dungeness he is not.

Again, take the Bristol Channel. As above stated, ships bound to or from Bristol are bound to take a pilot up and down channel. Ships bound to or from Cardiff, Newport, and Gloucester are not. A Bristol ship gets into collision with a Newport, Cardiff, or Gloucester ship, both having pilots. The Bristol ship has a remedy, the Cardiff, Newport, or Gloucester ship has none.

Finally, it is obvious that this exemption from liability not only leads to the most absurd and unjust consequences as between ship and ship, but, by removing a responsibility from those with whom it ought to rest, does away with one of the most important securities for safe navigation.

Mr. Vernon Lushington, Mr. Rothery, the Deputy Master of the Trinity House, and if we may form an opinion from a recent judgment,* the present Judge of the High Court of Admiralty, are of opinion that the state of things ought not to continue, and that the owner ought to be liable even when obliged to employ a pilot. In Belgium he is so liable, also in France,† probably also in the United States;‡ in Germany he is not.¶

Mr. V. Lushington argues ably that though, according to the principle of the English law of agency and liability, and its maxim, *Qui facit per alium facit per se*, an owner ought not to be responsible for the default of a pilot whom the law forces upon him, yet that, having regard to the practical consequences of that law in the present case, to the want of remedy which it causes, and to the fact that the law whilst compelling the employment of a pilot, simply does so for the sake of the shipowner, the shipowner ought to be liable. He might have added, that in a great majority of cases, those who are now compelled to employ pilots would employ them whether compelled or not; that in many cases e.g. in the Thames, the shipowners practically do select their pilots from the Trinity House list; and that no shipowner is compelled to employ a pilot, if he employs a master or mate who has passed a pilotage examination.

Perhaps the simplest and most correct way of putting it is, that it is a question of remedy, not of culpability. A loss has been sustained, which one of two persons—both of whom we may assume to be substantially innocent—must ultimately bear. Upon which of the two shall it fall—upon the owner of the ship which has caused, or upon the owner of the ship which has sustained, the injury? Undoubtedly, I think, on the former.

On the whole, if compulsory pilotage is to continue, the right course will probably be, to put an end to the immunity which is now consequent upon it. But I must admit that there is a difficulty in getting over the obvious argument that a man ought not to be responsible for the act of another whom he does not himself select and employ.

The fact is, that there is no complete solution of this question without also considering the larger question, whether compulsory pilotage ought to exist or not. And if it ought not to exist we shall have to consider whether the subject is ripe for complete legislation, whether we can do away with it at once, and if not, what steps we can take in that direction.

Speaking broadly, there are two views on the subject of pilotage, one or other of which prevails more or less in different ports in this country.

According to one view, it is the object of pilotage laws and regulations to ascertain that the pilots to whom licenses are granted are competent; to deprive them of their licenses if incompetent; to fix the rates of pilotage; and to require that if and where pilots are employed licensed pilots shall be employed in preference to unlicensed persons.

According to this view, the pilotage authority simply undertakes to see that the service is a competent one. It does not interfere with the law of supply and demand by fixing the number of pilots; and it leaves the trade free to employ pilots or not, according to their wants.

Whatever may be the difference of opinion on other points, there is no question whatever that regulations going on to this extent are desirable, if not necessary, in every large port the approach to which calls for knowledge of the local navigation.

According to the other view, it is the further business of a pilotage authority to determine how many pilots are wanted; to see that just that number and no more are licensed and employed; to provide that each shall get a fair share of the common earnings, and as a corollary from these propositions, to determine the amount of employment and remuneration of the pilots, by requiring every ship to take and pay for a pilot whether she wants one or not.

Upon this view there is, as above stated, great difference of opinion and practice in this country, and it is clear that the tendency of recent legislation is opposed to it. For instance, pilotage is, as above mentioned, with certain qualifications, compulsory on foreign going vessels at Falmouth, Liverpool, Glasgow, Bristol, in the southern channels of the Thames, and in many other ports. On the other hand, there is no compulsory pilotage whatever at Cork, Cardiff, Gloucester, Newcastle, Shields, Sunderland, or in the north channels of the Thames. Coasters are generally exempted. Many other exemptions exist, and one general exemption above referred to, almost leads to the conclusion that pilotage is in no case absolutely compulsory—that exemption, namely, which was introduced in 1853, in favor of every vessel whose master or mate can prove himself competent to pilot his own ship.

What then are the reasons for and against the principle of compelling shipowners to employ pilots?

* Judgment in the case of "Halley," annexed.

† See enclosure in letter from Foreign Office, H-38, 1868.

‡ Judgment in case of "Halley." See Mr. V. Lushington's paper.

¶ We have written to F. O. to inquire about the law in the United States.

|| See Article 470 of the recent Code, translated in Mr. Wende's book.