

1876.

NEW ZEALAND.

BROACHING CARGO AT SEA: LOSS OF THE "COSPATRICK."

(CORRESPONDENCE RELATING TO.)

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.*

Hon. J. VOGEL to the Right Hon. the Earl of CARNARVON.

7, Westminster Chambers, Victoria Street, Westminster, S.W.,
3rd May, 1875.

MY LORD,—

Some weeks since your Lordship caused to be sent to me an introduction to the Board of Trade, with a view to my conferring with some officer of that department upon questions relating to emigration.

2. I have had an interview with a gentleman connected with the Marine Department of the Board of Trade, and I promised to visit the office; but my health has not permitted me to do so. At the interview I have mentioned, I strongly urged some points which I considered it was desirable should, for the safety of emigrants, be attended to; and as it seems to me that my recommendations may have more weight when made direct to your Lordship if supported by your sanction, I venture to trouble you with this letter.

3. The principal points upon which I wish to dwell are:—First, the general condition of boats on board emigrant ships; second, the existing penalties for broaching cargo.

4. (1.) Apart from the fact that the boats are invariably too few for the number of emigrants on board, I have good reasons for believing that they are habitually not kept in a condition fit for use. In the interests of all concerned, I believe that a very simple legislative provision would meet this difficulty. A clause in a charter-party stipulating that the boats shall be kept in good condition has no effect, because there is no specific penalty for a breach of the stipulation, and, unless in the case of a disaster which bears its own punishment, no adequate means of deciding how the boats are kept. But if legislative powers were taken enabling the Board of Trade to decide from time to time the conditions under which boats on board emigrant ships must constantly be kept, and if it were also enacted that a special log-book must be kept, in which daily entries must be made by the master and the surgeon as to the state of the boats and their equipments, I believe it would be found that when the boats were required to be used they would at least be serviceable, however inadequate they might be for the number of persons on board.

(2.) When wines, spirits, oils, and inflammable substances are allowed to be carried in emigrant ships, they should be made as far as possible inaccessible to the sailors or passengers: they should, in fact, be as jealously guarded as the gunpowder in the magazine. As affecting one most important requirement in this direction, I respectfully ask that your Lordship will consider the present penalties for broaching or pilfering cargo at sea. I have no doubt whatever that the "Cospatrick" was destroyed through the use of matches or naked candles by men while broaching cargo. I would invite your Lordship's attention to the appended letters from *The Times* of the 27th and 30th of April. It was not, however, these letters which directed my attention to the frequency and danger of the offence of broaching cargo. Indeed, as you will see, another enclosure to this letter is of an earlier date; besides that, as the result of frequent observation, I made a still earlier representation on the subject to the Board of Trade.

5. I attach hereto a copy of a letter from the solicitor to the Government of New Zealand in London, in reply to a request that he would give me legal information on the subject. Your Lordship will observe that the punishment for pilfering or broaching cargo on the high seas is exceedingly light, whereas the act is so serious an offence against the safety of any ship at sea, and in the case of emigrant ships is fraught with such horrible consequences, that as a matter of necessary precaution scarcely any punishment could be too heavy for it.

6. I most earnestly ask your Lordship to consider whether, in the interests of humanity, the offence of broaching cargo at sea should not be made heavily punishable. In my opinion, it should be made a felony, with provisions for enabling the punishment to be meted out at any British port at which the

* Part of this correspondence was printed as H. 30—1875.

ship touches, and with power to the captains to keep the offender or offenders in irons until they can be brought before a legally-constituted Court. It should, I submit, be incumbent upon shipowners and captains to cause notices describing the penalties for broaching cargo to be kept affixed in prominent parts of ships, so that they may be seen by crew and passengers.

7. If your Lordship will cause inquiries to be made, I am confident that the results will confirm the statement that this offence is now most common, and that, apart from the consequent disputes between shipowners and insurance offices, the commission of it is constantly attended with danger to property and life.

The Right Hon. the Earl of Carnarvon, &c.

I have, &c.,

JULIUS VOGEL.

Enclosure 1 in No. 1.

[*Times*, April 27.]

UNSEAWORTHY SAILORS.

SIR,—

To the Editor of the *Times*.

Moved by the active exertions of Mr. Plimsoll and others, our Government has been stirred to devise legislative measures for the preservation of life on shipboard. I fear this object is not likely to be attained while we are at the mercy of that noble fellow Jack, on whose behalf such active sympathy has been elicited by the sad tale of his wrongs at the hands of hard shipowners, &c. I venture to ask you to publish for general information the following facts, attested by the surgeon, chief officer, and myself, and recorded in the official log of the ship the "Tweed," which is now deposited at the Board of Trade, and I think it will be evident how many a fine ship has come to the sad fate of the "Cospatrick," and many unfortunate passengers have met a watery grave.

The "Tweed," under my command, sailed in June last from this port for New Zealand, having on board 639 emigrants, and a crew of 54, in all 693 souls. We had a prosperous and speedy voyage, without any drawback, except as regards the crew. We had not been long at sea, when it was reported to me that the cargo was being plundered, and that naked lights were seen in the lower hold among all sorts of merchandise stowed there. Two of the ordinary seamen who had been seen passing sardines and preserved milk into the fore-castle were brought aft, and, after being confined all day, confessed to the surgeon, chief officer, and myself, that they were sent into the hold by the crew, and also that several of the sailors had been a great many times into the hold with naked candles, surreptitiously obtained from the emigrants' lamps. Failing to find any spirits, which I had fortunately stowed aft with a strong bulkhead between them and other cargo, they broke open the emigrants' boxes and cargo packages, and helped themselves to what they could get.

Before sailing, every possible precaution had been taken to prevent the crew gaining access to the hold; but it was accomplished by the men cutting a passage through the coals, removing the bulkhead, and passing out the plunder, which they secreted under the coals until they could get it into the fore-castle.

When this discovery was made, I refused to supply them with tobacco. Then their conduct became most disgraceful; they combined to neglect duty in every possible way, shamming sickness, &c., although pronounced by the surgeon to be quite well. Their conduct became daily more mutinous and disorderly, and they could not be kept out of the fore-castle at night, although the ship was running in dark, foggy weather, and in the vicinity of ice; and as the lives on board were in jeopardy by such conduct, I had two of the ringleaders confined in a cabin under the surveillance of the surgeon, which brought about a better state of things among the remainder.

On arrival in Otago, the ringleaders were brought before the police magistrate, and sentenced to four weeks' imprisonment with hard labour for neglect of duty, and eight weeks' for embezzlement of cargo.

This is by no means a solitary instance of crews plundering cargo in outward-bound ships; in fact, there is scarcely a vessel going to the colonies whose owner does not have to pay heavily for loss so occasioned; but what is of much more consequence is, the danger to valuable lives by crews getting into ships' holds with naked lights amid inflammable cargo, whereby many a good ship and many unfortunate passengers have been sacrificed, whose fate could never be told, for the ships have been posted as "missing."

While I was in New Zealand, the "Cathcart," another emigrant ship, arrived at Lyttelton with mutiny on board. The crew had plundered the cargo, got at the spirits, and such a state of things arose that in self-defence the captain armed his officers, and three of the men were wounded, for which the captain was tried and acquitted, but the men were sentenced to three months' imprisonment.

If Mr. Plimsoll would take a few trips from the Docks to the Downs in some of the outward bound, he would see a little of what masters have to contend with through the drunkenness and bad conduct of "poor ill-used Jack."

Yours, &c.,

WILLIAM STUART,
Master of the "Tweed."

Enclosure 2 in No. 1.

[*Times*, April 30.]

UNSEAWORTHY SAILORS.

SIR,—

To the Editor of the *Times*.

Having perused a letter with the above heading, inserted in the *Times* of yesterday, from Captain William Stuart, of the ship "Tweed," perhaps you may not think it out of place to insert a short narrative of my experience in command of the ship "Queen of the Age," on her late voyage to New Zealand.

The "Queen of the Age" sailed for Auckland on the 16th of November, 1873, having on board about 170 emigrants and a crew of 30 hands all told. Nothing particular occurred until the 14th of January, 1874, when the second mate reported to me that the coal-hole scuttle in the between decks, although secured by an iron bar, staples, and padlock, had been broken open by the crew; and upon going below into the coal-hole, I found that the bulkhead separating the cargo from the coals had also been broken through, and a number of cases opened, containing shawls, Crimean shirts, candles, anchovies, pickles, preserved salmon, and sundry other merchandise, and a large portion of their contents abstracted and gone.

Upon making this discovery, I mustered the crew, and demanded that the stolen cargo should be restored, but was met by a determined spirit of resistance on the part of several of the men, who refused to return the property or do any more duty in the ship, and even threatened the passengers with violence, who, they said, had given me information about the robbery.

The passengers now appealed to me for protection, and, after consulting with the surgeon in charge, I issued loaded muskets to them, to be used in their own defence. At the same time, several of the passengers volunteered to work the ship for me if the crew refused to do so. The resolute manner in which the passengers supported me and my officers overawed the seamen, who, finding a revolt would be hopeless, after some little hesitation restored the stolen property and returned to their duty.

Having again secured the forehold and placed sixty fathoms of chain cable in such a position as to prevent the possibility of any further plunder, the voyage was continued without any other incident of importance, until arrival at Auckland, on the 2nd of March, 1874, when eight of the ringleaders were sent on shore in charge of the police, and sentenced to three months' imprisonment with hard labour.

The moral of this appears to be, that if a burglar enters a house at night and steals a few trinkets, he will most likely get seven years' penal servitude; but if a seaman breaks through a strong bulkhead on board ship, and with a naked light among inflammable goods plunders the cargo, thereby endangering the lives of hundreds, he may reasonably expect to get off with three months' hard labour.

In the case of the "Tweed" and the "Queen of the Age," providentially the plunder was discovered before any injury had been sustained beyond the loss of the property; but if either of these ships had shared the fate of the unfortunate "Cospatrick," a Court of Inquiry would have been held, at which every effort would have been made to censure the captain and owners of the ship, while the noble British sailor, who caused the calamity, would have received a large measure of public sympathy.

My official log-book, in verification of the foregoing facts, has been deposited with the Board of Trade by

Your obedient servant,

EDWARD MONTGOMERY,

Master of the ship "Queen of the Age."

London, 28th April, 1875.

Enclosure 3 in No. 1.

Messrs. JOHN MACKRELL and Co. to the Hon. J. VOGEL.

DEAR SIR,—

21, Cannon Street, London, E.C., 26th April 1875.

By the Merchant Shipping Act, the penalties imposed upon a seaman for the offence of wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, is a forfeiture out of his wages of a sum equal to the loss he has occasioned, and also, at the discretion of the Court, imprisonment for any period not exceeding twelve weeks, with or without hard labour.

By "The Criminal Law Consolidation Act, 1861," penalties are imposed for stealing from vessels in rivers or in port; but there appears to be no special punishment enacted by such Act for broaching cargo on the high seas, except such punishment as might be inflicted for simple larceny, which under such Act is either penal servitude for three years or imprisonment with or without hard labour for not exceeding two years, and with or without solitary confinement. It would be open to question, however, whether, having regard to the special punishment imposed by "The Merchant Shipping Act, 1854," which is not repealed or referred to by the Consolidation Act, 1861, the punishment for larceny could be inflicted as well as that authorized by the Merchant Shipping Act.

No doubt, seamen being, as they are, well acquainted with the provisions of the Merchant Shipping Act, regard the punishment thereunder as all that would attach to the offence of broaching cargo.

Your suggestion, therefore, that the law upon this subject should, having regard to the disastrous fate of the "Cospatrick," now be reviewed, is evidently a very important one, and we believe would be supported by shipowners, who have to pay heavily for damages to cargo by the acts of the crew during a voyage.

At present, the captain of a vessel appears to have no power of inflicting any punishment upon the crew for such an offence, and it is worthy of consideration whether some power should not be vested in him.

We have, &c.,

The Hon. Julius Vogel.

JOHN MACKRELL AND Co.

No. 2.

Mr. W. R. MALCOLM to the Hon. J. VOGEL.

SIR,—

Downing Street, 11th May, 1875.

I am directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 3rd instant, offering observations in regard to the condition of boats on board emigrant ships, and to the penalties now imposed by law on the broaching of cargo.

Lord Carnarvon has forwarded a copy of your letter to the Board of Trade, and has recommended your observations to the special attention of that department.

Julius Vogel, Esq.

I am, &c.,
W. R. MALCOLM.

No. 3.

Mr. W. R. MALCOLM to the Hon. Sir J. VOGEL.

SIR,—

Downing Street, 11th June, 1875.

With reference to your letter of the 3d of May, and to the reply from this office of the 11th of that month, I am directed by the Earl of Carnarvon to transmit to you the enclosed copy of a letter from the Board of Trade, on the subject of your observations in regard to the condition of boats on board emigrant ships and the penalties imposed by law on the broaching of cargo,

Sir Julius Vogel, K.C.M.G.

I am, &c.,
W. R. MALCOLM.

Enclosure in No. 3.

Mr. T. H. FARRER to the UNDER SECRETARY of STATE, Colonial Office.

Board of Trade, Whitehall Gardens, 7th June, 1875.

SIR,—

Emigration.

I am directed by the Board of Trade to acknowledge the receipt of your letter of the 11th ultimo, transmitting, by the direction of the Earl of Carnarvon, a copy of a letter from Mr. Vogel, the First Minister of the Colonial Government of New Zealand, offering observations in regard to the condition of boats on board emigrant ships, and the penalties now imposed by law on the broaching of cargo, and requesting to be furnished with the views of this department on the subject.

In reply, I am to state, for the information of his Lordship, that, although it may be possible to make stringent regulations rendering it incumbent upon the masters of vessels to keep their boats in readiness and in a condition fit for immediate use, it would be difficult, if not impossible, to enforce such regulations when not voluntarily carried into effect by the master. Under such circumstances, it would be idle to make such regulations.

With reference to the subject of increased penalties to be imposed on persons convicted of broaching cargo, the Board desire me to point out, that broaching cargo may be a trivial or may be a serious offence, according to the special circumstances of each case. For a slight offence, the existing law affords an adequate remedy, and it remains to be shown that this law is enforced and is found to be ineffectual. It would be difficult to frame a clause inflicting a very heavy punishment for this offence which would not be too stringent and severe in the less important cases; and, before attempting to introduce any such legislation, it appears to the Board of Trade to deserve consideration whether, under the general Criminal Law concerning theft, there does not exist ample means of punishing the offence when it is of a serious kind.

The Board desire me further to observe, that, by the Merchant Shipping Bill now before Parliament, copy of which, as amended in Committee, is enclosed, the offence of stealing cargo is punishable, as at present, with twelve weeks' imprisonment (clause 24), but that this punishment may be doubled if the offence leads to danger to the ship.

The Under Secretary of State, Colonial Office.

I have, &c.,
T. H. FARRER.

No. 4.

The Hon. Sir J. VOGEL to the Hon. D. POLLEN.

7, Westminster Chambers, Victoria Street, Westminster, S.W.,

11th June, 1875.

SIR,—

I have been in communication with the Colonial Office and with the Board of Trade respecting the inadequacy of the penalties for broaching cargo at sea; and I have the honor to attach hereto copy of the correspondence which has passed on the subject.

The Hon. D. Pollen, &c.

I have, &c.,
JULIUS VOGEL.

No. 5.

The Hon. Sir J. VOGEL to the Right Hon. the EARL of CARNARVON.

7, Westminster Chambers, Victoria Street, Westminster, S.W.,

17th June, 1875.

MY LORD,—

I have the honor to acknowledge the receipt of a letter signed by Mr. Malcolm, forwarding, by your Lordship's directions, copy of a letter from Mr. Farrer, on behalf of the Board of Trade (No. 7272, of the 7th of June), in reply to suggestions made in mine of the 3rd of May, respecting the state in which boats are kept on board emigrant ships, and the inadequacy of the existing penalties for broaching cargo at sea.

2. I deem those subjects, and especially the latter, so important, that I venture to trouble your Lordship with some further observations.

3. It appears to be decided by the Board of Trade that it is not necessary to make more stringent penalties for broaching cargo at sea, because the offence may be serious or trivial, according to the circumstances of each case; that it is considered that three months' imprisonment, which can now be inflicted, is sufficient in a case held to be trivial; and that it is not certain that the general Criminal Law concerning theft does not provide ample means of punishing the offence. It appears, further, that it is proposed by the Merchant Shipping Bill now before Parliament (of which a copy was forwarded to me) to give power to double the three months' imprisonment when the offence of broaching cargo leads to danger to the ship.

4. I venture to suggest, that it is highly desirable to settle whether or not broaching cargo can be dealt with as ordinary theft, so that in distant parts of the Empire proceedings under the general Criminal Law may be taken whenever it is considered desirable to do so.

5. I would further submit that if such proceedings cannot be taken, six months' imprisonment is utterly inadequate to the offence of broaching cargo under the circumstances which ordinarily attend its commission, and the consequent danger therefrom to property and to life.

6. The case seems to me to lie within very small and simple limits. The offence of broaching cargo at sea is exceedingly common. It is not too much to say that it is committed each voyage in a large proportion of cargo-carrying vessels, whether or not passengers are also carried. For this offence the punishment is very light, and it is fair to presume that its frequency arises largely from that fact. It is an offence which, in most cases, is attended with great danger to all persons on board the ship. If these are statements of fact, as I believe them to be, I submit that it should be ascertained whether under the existing law a much heavier punishment than three months' imprisonment can be inflicted, and that, if it cannot, provision should be made for such heavier punishment.

7. If I should appear to be too persistent in pressing this matter, I would ask your Lordship to consider that the colony of the Government of which I am a member, cause to be brought to New Zealand yearly a large number of immigrants; and that I am of opinion that a great deal of the risk of the passage arises from the constant commission of the offence of broaching or pilfering cargo, and the danger which is inseparable from it.

The Right Hon. the Earl of Carnarvon, &c.

I have, &c.,

JULIUS VOGEL.

No. 6.

Mr. W. R. MALCOLM to the Hon. Sir J. VOGEL.

SIR,—

Downing Street, 14th September, 1875.

With reference to your letter of the 17th of June, I am directed by the Earl of Carnarvon to transmit to you, for your information, a copy of a letter from the Board of Trade respecting the penalties imposable by law for the broaching of cargo at sea, and stating the course which their Lordships are prepared at once to adopt in reference to this matter.

Sir Julius Vogel, K.C.M.G.

I am, &c.,

W. R. MALCOLM.

Enclosure in No. 6.

Mr. THOMAS GRAY to Mr. W. R. MALCOLM.

Board of Trade, Whitehall Gardens, 8th September, 1875.

SIR,—

Emigration.

I am directed by the Board of Trade to acknowledge the receipt of your letter of the 19th of June last, transmitting the copy of a further letter from Sir Julius Vogel on the subject of the penalties for pilfering or broaching cargo at sea.

I reply, I am to state, for the information of the Earl of Carnarvon, that the Board are advised that the offence of broaching cargo at sea, either by crew or passengers, is certainly punishable as ordinary theft under the general Criminal Law. The statute which deals with it is "The Larceny Act, 1851," which prescribes the punishment of three years' penal servitude, or two years' imprisonment with hard labour. A severe penalty for the offence is, therefore, already available; and as the language of the enactment expressly refers the infliction of penalties to the discretion of the Court, the necessary elasticity of the law for discriminating between light and more serious acts of pilfering or broaching cargo appears to be accordingly insured.

Sir Julius Vogel's suggestion for special legislation would, therefore, seem to be reduced to the question whether a specific penal enactment directed expressly against the offence in question might not tend more distinctly to mark it out as one of which the law takes serious cognizance, and which it is determined to repress.

In the meantime, it may be desirable to embody in a cautionary placard, to be posted up in every emigrant ship, those portions of the Acts which punish persons found guilty of plundering cargo, including the statute above referred to. This they will at once do. See Appendix.

The Under Secretary of State, Colonial Office.

I have, &c.,

THOMAS GRAY.

No. 7.

The Hon. Sir J. VOGEL to the Right Hon. the Earl of CARNARVON.

7, Westminster Chambers, Victoria Street, Westminster, S.W.,

20th September, 1875.

MY LORD,—

I have the honor to acknowledge the receipt of a letter from Mr. Malcolm, forwarding, by

direction of your Lordship, copy of one from the Board of Trade on the subject of broaching or pilfering cargo at sea, respecting which I had the honor to address your Lordship in letters dated May 3 and June 17, 1875.

2. In the communication from the Board of Trade, Mr. Gray states that "the Board are advised that the offence of broaching cargo at sea, either by crew or passengers, is certainly punishable as ordinary theft under the general Criminal Law," and that, whilst considering whether it is desirable there should be special legislation against the offence, in order to "mark it out as one of which the law takes serious cognizance, and which it is determined to repress," the Board will cause notices to be posted in every emigrant ship, stating the severe penalties to which those who commit the offence render themselves liable.

3. I have to express my acknowledgments to your Lordship for the aid which you have given to me in this matter, and to the Board of Trade for the attention given to my representations. I am convinced that the repression of the offence of broaching or pilfering cargo will be the means of saving from destruction by fire at sea many lives and much property.

The Right Hon. the Earl of Carnarvon, &c.

I have, &c.,
JULIUS VOGEL.

No. 8.

The Hon. Sir J. VOGEL to the Hon. D. POLLEN.
7, Westminster Chambers, Victoria Street, Westminster, S.W.,
20th October, 1875.

SIR,—

Nos. 4 to 7.

I have the honor to forward to you herewith, copy of correspondence with the Colonial Office, on the subject of the penalties for broaching cargo at sea, &c., in continuation of that which was enclosed in my letter of June 11.

You will be glad to find that the Board of Trade has generally complied with the representations made by me.

Hon. D. Pollen, &c.

I have, &c.,
JULIUS VOGEL.

APPENDIX.

BOARD OF TRADE NOTICE.

CAUTION.—Adverting to the fearful consequences resulting from fire at sea, and bearing in mind the finding of the Court of Inquiry into the loss of the "Cospatrick," that the calamity had been brought about by the carelessness of plunderers in the fore-hold, the Board of Trade have thought it necessary to draw public attention to the punishment to which persons guilty of plundering cargo render themselves liable. By the 243rd section of "The Merchant Shipping Act, 1854," any seaman found guilty of embezzling or wilfully damaging any of the stores or cargo of his ship, is liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour. The Board are also advised, that all persons whosoever, whether among the passengers or crew, who are found guilty of the offence of plundering cargo, are liable, under the Larceny Act of 1861, at the discretion of the Court, to penal servitude for three years, or imprisonment with or without hard labour for a term not exceeding two years, and with or without solitary confinement.

By order of the Board,

T. H. FARREB, Secretary.

THOMAS GRAY, Assistant Secretary.

Marine Department, Board of Trade.

COLONIAL NOTICE.

THE attention of Resident Magistrates is directed to a correspondence between the Colonial Office and Sir Julius Vogel, published in *New Zealand Gazette* of 6th instant. It will be seen, by a Memorandum from the Board of Trade, that the Board is advised that the offence of broaching cargo at sea is certainly punishable as ordinary theft under the general Criminal Law.

The provisions of "The Larceny Act, 1861" (erroneously cited in *Gazette* as "Larceny Act, 1851"), are embodied in "The New Zealand Larceny Act, 1867."

By order.

R. G. FOUNTAIN, Under Secretary.

Department of Justice, Wellington, 11th January, 1876.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington,—1876.