

here and part in Cuba, for scuttling the vessel. You will remember \$2,000 was drawn before he left Cuba. (Mr. Kerr asked His Honor to read the affidavits made to postpone the case till proper evidence could be got from Cuba.) I don't know as I will refer to the affidavits as they are not in evidence in this case. There is another point in this case I think important; that is, in regard to the cargo of the vessel. Do you think this cargo was really melado, or as some of the witnesses said, only dirty water? If the evidence of the Cuban, Melian, is to be relied on, and all the melado like in the broken casks, it is very clear it was not melado; but that is for you to say; and also as to the evidence of Beste who said he traded in the melado, and the evidence of others who have carried melado, whether it was dirty water or not. Of the other casks we don't know, we only knew of the casks that were opened. I think this is a matter for you to consider whether it was melado or not. If it was melado, what was its weight? Beste's evidence goes to show melado weighs from 1850 to 1900 lbs. per cask; and that of the Cuban to the same effect. Now do you think that the vessel was capable of carrying a cargo of 863 casks? With a cargo of 517 tons of coal she drew 14 feet of water. Now, how much deeper would she be with 863 casks of melado; one witness says, looking at her register, that 863 casks of melado would make an additional weight over the 517 tons, of 200 tons, and that this would bear her down 20 inches more in the water. Now, if that vessel was no deeper with the cargo of melado than she was when she came out with the coals from Cardiff, do you think it was melado or not? If not melado will that lead you to any suspicions of the captain's complicity in connexion with her loss? If melado you can see why the captain would not be guilty of destroying the vessel and her valuable cargo; but if not melado it supplies a motive for casting away the vessel with that stuff in. Do you think that he knew whether it was melado or not? Thomas says when the cargo was coming on board he told him it was queer looking stuff, and the captain made no response. They all say that one cask was on deck all the time, and that they had an opportunity of looking at it. The captain said to Thomas that the cargo was never going to New York. Does that lead your mind to any suspicion of the conduct of Tower, or does it satisfy you that the evidence of Thomas giving the way the vessel was destroyed was true or not?

The Cuban says (and he was not allowed to go as far as he was disposed to in speaking of this) she was called by the name of the "water barque." He was going to give his reason and was stopped in that. He said they took no care in stowing the cargo; that some of the casks burst and ran about the deck, and that the steward washed his clothes in it. One of the witnesses, Trisinski, I think, took some of it and put it in his tea, and it destroyed the tea. Now, did the captain know if it was melado or not? If a cask of melado weighs as Mr. Beste and other witnesses say, do you think a vessel would draw no more water than she would with 517 tons of coal? If not, does that satisfy you that this was not really melado? If it was melado do you think that this vessel, with the quantity of water stated to have been in her, would not have gone right down? A number of witnesses on both sides say she could not have floated any considerable time. Now, as to the quantity of water in the hold of this vessel: The evidence goes to show that there was about 12 feet of water. Now, if 12 feet of water had been in her, and she only little over a 12 feet hold vessel, could they have knocked in the bow ports and not reached water? The bow ports were down below water when they went back in the boats after abandoning her. The water was not up to the main deck, nor up to the cabin floor. The statement made before the Naval Court and notary that she was fired, if this is true, is not reliable and goes to show that the condition of the vessel was misrepresented before the notary and before the Naval Court. That her position was not such as would justify the abandonment of the vessel, some of the witnesses say if some seven or eight feet of water was in the hold and they could control the water they would not have abandoned her. Others say they would. That is for you to consider and draw your own conclusions. We are not trying Tower, as to whether he was guilty of misjudgment, but trying him for a criminal act. You are not trying him as to how she ought to have been lost; but whether she was lost in the way Thomas' evidence goes to show. If the evidence of Thomas is satisfactory to you that Captain Tower told him to do what he says he did and she was lost, there is an end to the matter. If you should be satisfied by the evidence of these various captains that have been called, that the