

In the Matter of License No.73936  
Issued to: HARRY H. MILLER

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

362B

HARRY H. MILLER

This appeal comes before me by virtue of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 28 and 29 March, 1949, the Appellant appeared before an Examiner of the United States Coast Guard at Detroit, Michigan, to answer a charge of negligence supported by the following specifications:

1. In that you, while serving as Master and in charge of navigation on board a merchant vessel of the United States, the SS EDWARD N. SAUNDERS, JR., under authority of your duly issued License did, on or about 8 August, 1948, being underway and downbound in Detroit River, neglect and fail to establish a passing agreement with the upbound and oncoming SS DETROIT, as is required by Sec. 322.4 of the Pilot Rules for the Great Lakes; also Rule 24 (28 Stat. 645-650, as amended; 33 U.S.C. 241-294) before continuing your downbound course in Detroit River, and through such neglect, did contribute to the collision of SS EDWARD N. SAUNDERS, JR. and SS DETROIT, that occurred in Detroit River at or about 2310 Eastern Standard Time, 8 August, 1948.

2. In that you, while serving as above stated, did neglect to slow down SS EDWARD N. SAUNDERS, JR., which was deeply laden and proceeding with the current of the river, to a moderate speed, according to the circumstances, when meeting the upbound and oncoming SS DETROIT and SS JOHN M. MCKERCHEY, said upbound steamers being at that time approximately abreast of each other, and through such neglect did contribute to the collision of SS EDWARD N. SAUNDERS, JR. and SS DETROIT that occurred in Detroit River at or about 2310 Eastern Standard Time, 8 August, 1948.
  
3. In that you, while serving as above stated, and the SS EDWARD N. SAUNDERS, JR., being underway and the descending steamer in Detroit River and meeting the upbound and oncoming SS DETROIT and SS JOHN M. MCKERCHEY, said upbound steamers being at that time approximately abreast of each other, and you having the right to elect which side you would take did neglect and fail to exercise precaution or prudent seamanship, in exercising your right of election and through such neglect did contribute to the collision of SS EDWARD N. SAUNDERS, JR. and SS DETROIT that occurred in Detroit River at or about 2310 Eastern Standard Time, 8 August, 1948.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the possible consequences of the hearing and all the rights to which the person charged is entitled. Appellant was represented by counsel of his own choice and he pleaded "not guilty" to each of the three specifications and the charge. The Investigating Officer rested his case after six of his subpoenaed witnesses had testified. Thereupon, counsel for the person charged made motions to dismiss all three of the specification on the grounds that the evidence did not support the charge. The Examiner granted the motion to dismiss the first specification but denied the motions with respect to the other two specifications. When the Investigating Officer and Appellant's counsel had completed their closing arguments, the Examiner reserved decision until he had an opportunity to review the evidence. In his decision, dated 6 April, 1949, the Examiner found the second and third specifications and the charge "proved" and entered an order suspending Appellant's license for one year - two months outright suspension and the balance of ten months to be on

two years' probation. The Examiner stated in his decision that the motion to dismiss the first specification had been granted because the specification "is too comprehensive in its terms to afford the person charged an understanding of the nature of his alleged offense, and to allow him properly to prepare his defense."

Appellant has been issued a temporary license pending determination of the appeal. There is no record of any previous disciplinary action having been taken against the Appellant by the Coast Guard.

An appeal from this order has been taken in which it is contended that:

- A. The Examiner erred in failing to dismiss the second specification, and in finding this specification proved, because the evidence does not prove that Appellant was guilty of negligence as a result of the alleged offense of neglecting to slow his ship to a moderate speed, under the circumstances, when meeting two upbound and oncoming ships approximately abreast of each other.
1. The evidence in the record does not support all of the findings made by the Examiner. Some of the findings are based on evidence received in a subsequent hearing involving the alleged negligence of the Master of the other ship in the collision.
2. The evidence in the record establishes the facts that Appellant obeyed all rules and regulations as well as all the requirements of prudent seamanship; that he did moderate the speed of his ship; and that he would have had a wide, clear channel to pass between the two ships if both of the latter had acted lawfully.
3. There is no basis for the Investigating Officer's presumption of negligence, based on immoderate speed, simply because a collision did result; but there is a presumption in Appellant's favor that other vessels will maintain their proper course and otherwise act lawfully. This specification is a result of the Investigating Officer's mistaken concept as to the position of the three ships before the collision.
4. The regulations and cases require that a specification must set forth the facts which form the basis of the

charge. Hence, findings of fact that Appellant failed to sound the danger signal and that he should have stopped under certain circumstances are not sufficient to support the specification since neither these omissions nor the circumstances required are alleged in the present specification.

5. Summarily, only some of the findings of fact are supported by the evidence in this record and such findings are not sufficient to support the second specification. Hence, Appellant is not guilty of a negligence charge based on this specification.
- B. The Examiner erred in failing to dismiss the third specification as his own findings of fact establish that the offense of failing to follow prudent seamanship in exercising his right of election as to which passing signal to use was not proved.
  1. The theory which prompted the Investigating Officer to draft the third specification was based on mistaken assumptions that the two upbound ships were much closer together than the evidence bears out.
  2. The Examiner found that the ship with which Appellant's ship collided was over a half mile distant and well to starboard of Appellant's ship when the starboard passing signal was properly sounded from the latter.
  3. Therefore, the findings of fact establish affirmatively that the proper signal was used by Appellant.
- C. Irrespective of what the result might have been had the specifications been different, the fact remains that Appellant could not be fairly found guilty, under the evidence adduced at the hearing, of the offenses set forth in the specifications used herein.

Appellant has the right to retain his license until the Examining Officer is convinced beyond a reasonable doubt by competent evidence that the charges preferred against him have been proved. The conviction of Appellant cannot be justified and should be set aside.

#### *FINDINGS OF FACT*

On or about 8 an 9 August, 1948, Appellant was serving, under authority of his duly issued License No. 73936, as Master of the

American SS EDWARD N. SAUNDERS, JR., which was carrying a cargo of iron ore and was downbound on the Detroit River proceeding from Duluth, Minnesota, to Cleveland, Ohio. On the night of 8 August, 1948, the weather was clear, visibility excellent and the Detroit River was well lighted in the vicinity of the Ambassador Bridge and the New York Central Railroad tunnel, both of which cross the river between Detroit and Windsor.

At approximately 11:00 P.M. Eastern Standard Time on 8 August, 1948, the carferry DETROIT left her slip on the American shore about 1400 feet easterly of the Ambassador bridge. The DETROIT was upbound and heading for a terminal in Windsor, less than two miles distant across the river, with a load of freight cars.

At approximately 11:05 P.M. Eastern Standard Time on 8 August, 1948, the upbound tug BARKHAMSTEAD passed the SAUNDERS about a mile and a half above the Ambassador Bridge (3,000 feet above the New York Central Railroad tunnel). The SAUNDERS blew a one blast passing signal and the BARKHAMSTEAD answered with one blast. At that time, the SAUNDERS was in the middle of the river. There was another downbound ship astern of the SAUNDERS and the SS JOHN M. MCKERCHEY was upbound approximately abeam of the DETROIT and about 200 feet from the Canadian shore.

The DETROIT sounded a one blast passing whistle signal for the SAUNDERS. Shortly thereafter, and while approximately 1500 feet above the New York Central Railroad tunnel and still in the middle of the river, the SAUNDERS sounded a two blast passing whistle signal for the DETROIT. At this time the DETROIT was about 1700 feet below the said tunnel and both of the DETROIT's side lights were visible to the SAUNDERS, bearing about two points off the starboard bow of the SAUNDERS. The SAUNDERS had previously checked to half speed - about 8 miles per hour. There is no evidence in the record as to the speed being made by the DETROIT.

The DETROIT remained to the starboard of the SAUNDERS at all times prior to the collision of the two ships. There is no evidence as to any changes of course by the DETROIT or changes of speed by the SAUNDERS or the DETROIT; but there is evidence that the SAUNDERS maintained a steady course up to the time of the collision.

The SAUNDERS repeated the two blast signal upon receiving no answering signal from the DETROIT. Shortly thereafter, at 11:10 P.M. Eastern Standard Time, the two ships collided at a position approximately in the middle of the river over the New York Central Railroad tunnel. The MCKERCHEY was abeam of the two ships and still about 200 feet off the Canadian shore. The port bow of the DETROIT struck the starboard bow of the SAUNDERS. The channel at this point is about 1800 feet wide.

No testimony was submitted by any person who was aboard either the SAUNDERS or the DETROIT. All testimony bearing on the collision was given by the Investigating Officer's witnesses from the BARKHAMSTEAD and MCKERCHEY.

### OPINION

Appellant's contention that the Examiner was in error by concluding that the third specification was proved is sustained. According to Pilot Rule 24 for the Great Lakes, the Appellant was entitled to elect which passing signal to use because his vessel, the SAUNDERS, was the descending one. The Examiner found that the SAUNDERS "properly initiated a two whistle passing with the DETROIT \* \* \* being at least a half-mile away from the DETROIT" (Finding of Fact No. 13); and that the DETROIT was "well to starboard of the SAUNDERS" at this time. (Finding of Fact #10) Faced with these findings of fact, it is difficult to understand by what reasoning the Appellant was found guilty of the third specification. In fact, Appellant's argument that the above findings of fact actually prove that the Master of the SAUNDERS did exercise prudent seamanship in his election seems to be perfectly valid although quite unusual. Since these two findings of fact are supported by the evidence and as there were no findings of fact made which contradict these two so as to support the conclusion that the specification is proved, it is my opinion that the incompatible nature of the findings and conclusion drawn, with respect to the third specification, require that the latter be found "not proved."

Since the first specification was dismissed by the Examiner, Appellant's guilt, or innocence, of negligence depends upon the sufficiency, or inadequacy, of the second specification. After carefully reviewing Appellant's lengthy discussion of this

specification as outlined above, I am convinced that Appellant's arguments, although believed to be partially sound, are not sufficient to overcome the well-founded conclusion that Appellant was guilty of negligence based upon this specification.

Before going farther, it should be pointed out that Appellant is under the mistaken belief that he should not be found guilty until the charge has been proven "beyond a reasonable doubt."

Both the Administrative Procedure Act (section 7(c)) and the regulations promulgated pursuant thereto (46 C.F.R. 137.21-5) state that the decision must be supported by "reliable, probative and substantial evidence." Hence, the burden of proof is not as great as has been suggested by Appellant.

Appellant's contention (Point A(1), my opinion) that the evidence in the record is not sufficient to support all of the findings made by the Examiner is not a persuasive argument for reversal. The findings of fact in my opinion (supra) are based wholly on the hearing record of this proceeding and none other. A comparison of my findings with those of the Examiner discloses the following discrepancies:

1. Finding No. 3: The time of collision was 12:10 EDT and not 12:30 EDT.
2. Finding No.4: The two ships collided approximately in the middle of the river over the tunnel and not 400 feet off the Canadian shore. The former position is substantiated by the testimony of witnesses who saw the collision occur.
3. Finding No. 5: The passing occurred at 12:05 EDT and not at 12:10 EDT. Exhibit II indicates a different location than is specified in Finding No. 5.
4. Finding No.11: This ultimate finding is not supported by the evidence and is not plausible under the circumstances. No witnesses appeared from the DETROIT to explain any interpretation there of signals sounded by the SAUNDERS.
5. Finding No.18: The evidence supports the finding as to the speed of the SAUNDERS (8 M.P.H.). The conclusion that such speed was excessive under the circumstances is sufficient to support the second specification and charge of negligence if it is, in turn, supported by the law in

cases under similar circumstances. This will be discussed *infra*.

My authority to alter or modify any findings of the Examiner is contained in the Administrative Procedure Act, section 8(a) and 46 Code of Federal Regulations 137.11-10.

From the above, it can be seen that the only issue of major importance is to determine whether the Examiner's "Finding of Fact #18" is justified by the record. Although there are slight discrepancies between the Examiner's findings of fact and mine, Appellant was adequately informed so as to permit him properly to prepare his appeal.

Appellant also argues (Point A(2), my opinion) that the evidence shows he obeyed all rules and requirement requisite for him to observe in view of the fact that he had a clear, wide channel to pass between the two oncoming ships. With this, I cannot agree.

In collision law liability is predicated upon fault. The technique for determining fault is to set up to set up navigation rules which prescribe action or nonaction in the particular instance and make the vessel which was not obeying the rules exculpate itself. If a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is a reasonable presumption that this fault was a contributory cause of the disaster, and the burden rests upon the ship of showing affirmatively that her fault could not have been one of the causes of the collision. *The Pennsylvania*, 19 Wall. 125, 136. Since "fault" is analogous to "negligence," the above applies equally with respect to a charge of negligence by the Coast Guard except that there might conceivably be "negligence" which does not contemplate a violation of any navigation rule.

The above prefatory remarks are sufficient to associate the Investigating Officer's repeated statements that the charge is negligence and not the violation of any specific rule with the Appellant's contention that he was not guilty of negligence if he obeyed all pertinent rules and regulations. The obvious conclusion is that Appellant was guilty of negligence if he violated any of the rules or regulations under which he was acting while navigating

on the Detroit River. It was not necessary to allege the violation of any specific rule since negligence is usually inherently based on such a violation. It was sufficient that the specification set out the facts forming the basis of the charge, i.e., "did neglect to slow to a moderate speed, according to the circumstances, when meeting the upbound and oncoming SS DETROIT and SS JOHN MCKERCHEY."

Appellant assumes that he is not guilty because there is no specific requirement that a downbound vessel reduce speed simply because she is meeting two upbound vessels abreast of each other in the Detroit River. This assumption does not take into consideration the circumstances here present. Admittedly, the situation would have been quite different if the DETROIT and the MCKERCHEY had both been on parallel courses with the SAUNDERS. But the evidence discloses that the DETROIT was cutting across the river on a collision course with the SAUNDERS. This would necessarily create a dangerous situation regardless of the presence of the MCKERCHEY and the latter's proximity could only enhance the danger. Under these circumstances, Appellant violated more than one of the "Pilot Rules for the Great Lakes" by not slackening the speed of the SAUNDERS.

Appellant did sound the proper passing whistle signal and it was disregarded by the DETROIT. But, in connection with Pilot Rule 26, it was held *The New York (1899)*, 175 U.S. 187 that:

"Nothing is better settled than that, if a steamer is approaching another vessel which has *disregarded her signals*, or whose position or movements are uncertain, she is bound to stop until her course be ascertained with certainty.

\* \* \* The lesson that steam vessels must stop their engines in the presence of danger, or even anticipated danger, is a hard one to learn; but the failure to do so has been the cause of the condemnation of so many vessels that it would seem that these repeated admonitions must ultimately have some effect. We cannot impress upon the masters of steam vessels too insistently the necessity of caution in passing or crossing the course of other vessels in constricted channels."

With regard to this same rule, it has been held that both vessels were guilty of negligence even though passing agreements

were made (which is not true in this case) and only one of the ships took a course inconsistent with the agreement. In one of these cases, the Master of a downbound ship on the Detroit River was found guilty because he had not reduced speed while attempting to pass another vessel with which his ship collided. *Argo S.S. Co. v. Buffalo S.S. Co.* (C.C.A. Mich. 1915) 223 Fed. 581.

The case of *The Louis Dole* (D.C. III. 1870) Fed. Cas. No. 8,534 states that a failure to answer a second signal will not justify the signaling vessel in proceeding as if the other had yielded her course, even though the latter is in the wrong place and on the wrong course, and she must proceed cautiously.

In a case similar to this one, both vessels were held at fault for proceeding after the upbound vessel refused to answer the passing signal sounded by the downbound ship. The SENATOR was downbound on the St. Mary's River and sounded two two-blast whistle signals directed at the REAM which was upbound and proceeding directly across the course of the SENATOR. The REAM sounded the danger signal but the SENATOR remained on the same course without any change in speed. It was held that the rule for passing agreements by signal, or for checking or stopping in lieu thereof, was applicable. *The Norman B. Ream* (C.C.A. Wis. 1918) 252 Fed. 409.

Even when there is a privileged vessel (which is required to hold its course and speed) involved in a collision, it is well established that such a vessel must sometimes abuse the course and speed rule in order to remain blameless. In another Detroit River passing case, it was said that the fact that a vessel is entitled to hold her course and speed does not excuse her from adopting such precautions as may be necessary to prevent a collision in case there is a distinct indication that the obligated vessel is about to fail in her duty; and this clearly applies to a vessel going with the stream when passing involves danger of collision. *The New York* (1899), 175 U.S. 187.

Again, *The America* (1875), 92 U.S. 432, is authority for the statement that a departure from the general rules is not only allowed in some cases, but when observance of a rule would plainly tend to bring about a collision and departure from the rule would

avoid it, departure becomes a duty. This case states further that a vessel is in fault where a blind adherence to the rule, that she shall keep her course and speed, necessarily results in a collision which a change would probably have averted.

Considering the above cases in connection with Pilot Rule 26 and remembering that Appellant may properly be found guilty of negligence if the failure to moderate speed violates any pertinent rule, it is my opinion that the Examiner's finding of "guilty" was correct and was based upon the second specification which is supported by the evidence.

It also appears that by failing to sufficiently slacken the speed of his ship, Appellant violated the Great Lakes Pilot Rules 27 and 28 which specify that action shall be taken when required by "special circumstances."

In the case of *The Kingston (D.C.N.Y.1909)*, 173 Fed. 992, the privileged vessel, KINGSTON, was held to have been guilty of contributory fault in that she maintained an excessive speed of 10 M.P.H. when it became apparent that the TITANIA was being negligently navigated. The rule which requires the privileged of two vessels to keep her course and speed was said to be subject to exception by the terms of Rules 27 and 28, where special circumstances demand a departure from Rule 20 in order to avoid danger of collision. There were reasonably clear indications that the TITANIA would probably omit conforming to her duty. Since there was danger of a collision, the KINGSTON should not have ignored Rules 27 and 28 but should have reduced speed in the exercise of good seamanship. Similarly, the SAUNDERS was obligated to moderate her speed when she observed the behavior of the DETROIT.

Another case in point is *The Manitoba (1886)*, 122 U.S. 97. The COMET and the MANITOBA were on nearly parallel opposite, but slightly converging, courses and their speeds were 9 and 11 M.P.H. Although the COMET was at fault, the relative courses of the vessels, the bearing of their lights and the manifest uncertainty as to the intentions of the COMET, in connection with all the surrounding circumstances, called for the closest watch and the highest degree of diligence on the part of each with reference to the movements of the other. Despite the fact that the COMET was clearly at fault, the MANITOBA was held to have been in fault also

for not slowing until too late. The proximate cause of this collision on Lake Superior was a late change of course by the COMET. Hence, it is seen that even flagrant fault committed by one of the vessels will not excuse the other from adopting every reasonable and practical precaution to prevent a collision.

The obligation to slacken speed arises in cases of constant or continuous approach on converging courses.

The speed of the SAUNDERS was approximately 8 M.P.H. It has been stated that 3 M.P.H. was an excessive speed on a river during the season of navigation and when the river was crowded with other craft. *The Buckeye (D.C. Ill. 1881)*, 9 Fed. 666. The evidence discloses that there was considerable traffic on the Detroit River in the vicinity of the collision on the date in question.

In view of the fact that the presence of the MCKERCHEY is not material in this case, the significance of *Pittsburg S.S. Co. v. Kelley Island Lime and Transport Company*, 72 F. Supp. 256, as cited by Appellant is unimportant. In addition, the colliding ships in the latter case had established a passing agreement between them. As mentioned before, there was no passing agreement between the SAUNDERS and the DETROIT.

It is true that there must be immediate danger before these "special circumstances" rules are invoked and before it becomes mandatory that the ordinary requirements are no longer to be complied with. No such "special circumstances" are present if an impending danger is too distant to be considered immediate. But, in this case, there is no indication that Appellant made any attempt to reduce the speed of the SAUNDERS, or to take any other precautionary measures, at any point between the time the first two-blast whistle signal was sounded and the time of the collision. Even a privileged vessel, which is required to hold its course and speed as long as it is possible for the other vessel to conform with the rules in time to escape collision, is required to invoke the "special circumstances" rules at that point where danger of collision becomes so imminent that it can only be avoided by the privileged vessel departing from the rule which had governed its course until that time. Failure to act at this point will make both vessels liable. Continued adherence to a definite rule, when such adherence invites collision, is culpable fault. *The*

*Sunnyside*, 91 U.S. 208, 222. Clearly, Appellant should have invoked the "special circumstances" rules and taken steps to considerably reduce his ship's speed at some time prior to the time of the collision.

Appellant further contends (Point A(3), my opinion) that the specification is defective because it is based on the Investigating Officer's incorrect assumptions as to the position of the ships, and the necessarily resultant negligence of Appellant (for not reducing the speed of his ship) since there was a collision.

As mentioned before, any mistaken assumptions which might have been made, with respect to the distance between the upbound DETROIT and the upbound MCKERCHEY, are immaterial so long as the specification is sufficiently clear to inform Appellant as to the offense he is charged with; and so long as the evidence supports the specification. These requirements have been satisfied. From the point of view of the width of the channel between the two upbound vessels, the speed of the SAUNDERS seems not to have been excessive; but the continued collision courses of the DETROIT and the SAUNDERS indicate that the speed of the SAUNDERS was excessive.

This conclusion is not based, as is contended by Appellant, on the presumption that Appellant necessarily was negligent because there was a collision. A collision is not conclusive evidence of negligence but the fact that there was a collision makes it perfectly clear that there must have been danger of a collision. Since there was danger of a collision and Appellant did not observe the highest degree of caution to avoid it, he was negligent. He would have been equally guilty of negligence if there had been "danger of a collision" and no subsequent collision but such a case would be more difficult to prove because the absence of a collision would often make it difficult to establish the fact that there had been "danger of a collision." Hence, the Investigating Officer's argument that the collision made it evident that Appellant was required to have proceeded with extreme caution is perfectly legitimate.

Appellant correctly contends (Point A(3), my opinion) that there is a presumption in his favor that, under the circumstances in a case of this nature, each of two approaching vessels has the right to presume that the other vessel will act lawfully.

Generally, this is true. But beyond a certain point, this presumption also is affected by the "special circumstances" involved. Appellant has cited *Lake Erie Transportation Company v. Gilchrist Transportation Co.*, 142 Fed. 89, to illustrate this presumption. But in this same case, it was also stated:

"That every vessel when approaching another so as to involve risk of collision shall slacken her speed, or stop or reverse, if necessary, is plain elementary law."

Thus, it is repeatedly brought out that all the navigation rules pertinent to a given situation are to be construed together and while each of two approaching vessels has the right to expect the other to navigate in accordance with the rules, when it becomes evident that either is not so doing, it is the duty of the other to navigate accordingly and take such measures as may seem necessary to avoid a collision. *United States v. Erie Railroad Co.* (C.C.A. Mich. 1909), 172 Fed. 50. In the latter case, the Master was held to be at fault for not having taken precautions required by the "special circumstances."

The case of *The Milwaukee (1871)*, Fed. Cas. No. 9,626, also makes it clear that the fault of the DETROIT does not excuse the Appellant. There was a collision between the MILWAUKEE and the LAC LA BELLE on the St. Clair River. The latter ship sounded one blast for a port to port passing but the MILWAUKEE persisted in attempting to negotiate an unauthorized starboard to starboard passing, an action which primarily caused the collision. The LAC LA BELLE contended that since she had signaled properly she was justified in assuming there was no risk of collision, as collision could not have occurred but for the wrongful act of the MILWAUKEE. But the court found the LAC LA BELLE at fault also and used the following language:

"\* \* \*. Risk of collision begins the very moment when two vessels have approached so near each other and upon such courses that by departure from the rules of navigation, whether from want of good seamanship, accident, mistake, misapprehension of signals, or otherwise, a collision might be brought about. It is true that prima facie each man has a right to assume that the other will obey the law. But this does not justify

either in shutting his eyes to what the other may actually do, or in omitting to do what he can to avoid an accident made imminent by the acts of the other. I say the right above spoken of is prima facie merely, because it is well known that departure from the law not only may, but does, take place, and often. Risk of collision may be said to begin the moment the two vessels have approached each other so near that a collision might be brought about by any such departure and continues up to the moment when they have so far progressed that no such result can ensue. But independently of this, the idea that there was no risk of collision is fully exploded by the fact that there was a collision."

It is my opinion that Appellant's Point A(4) above is well taken so far as it concerns his argument that the finding of "guilty" may not be based upon the findings of fact that he failed to sound the danger signal and that he should have stopped the SAUNDERS. Failure to do these two things was not mentioned in the second specification and, therefore, such findings may not be used to support the specification. But it is alleged in the second specification that Appellant "did neglect to slow \* \* \* to a moderate speed, according to the circumstances" and it was found that "up until the collision, the SAUNDERS was traveling 8 miles per hour, excessive speed under the circumstances" (Finding of Fact No. 18). It is certainly obvious that the latter finding of fact is sufficient to support the specification.

Also, since the specification states "according to the circumstances" and does not state that there was a violation of any specific rule, Appellant cannot limit the required proof of the "circumstances" to the "circumstances" mentioned in Rule 26 or any other specific rule or regulation. In fact, the "circumstances" required by Rules 27 and 28 are not any more specific than the "circumstances" alleged in the second specification.

#### CONCLUSION

In conclusion, and in reply to Appellant's Points A(5) and C (my opinion), I am convinced that the Appellant was properly found guilty of the offense alleged in the second specification and the charge. The findings of fact in this record are supported by the

evidence except as has been otherwise noted. Based on those findings of fact which are properly in the record and the lawful obligations of those operating under such circumstances, the conclusion that Appellant was guilty of negligence in this case is wholly justified. The wording of the second specification is broad enough to encompass all the pertinent rules, regulations and requirements of good seamanship; but, at the same time, it is sufficiently limited to leave no doubt as to the specific offense with which Appellant is being charged.

*ORDER*

The order of the Examiner dated 6 April, 1949, should be, and it is, AFFIRMED. In accordance with existing policy, the suspension ordered shall commence to run upon the expiration of the temporary license which has been issued to Appellant.

J.F. FARLEY  
Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 14th day of November, 1949.

\*\*\*\*\* END OF DECISION NO. 362B \*\*\*\*\*

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