

In the Matter of License No. 4720
Issued to: VITANT BULWICH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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VITANT BULWICH

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 22 April, 1949, Appellant appeared before an Examiner of the United States Coast Guard to answer a charge of negligence supported by two specifications, the first alleging that while serving as master of the SS STEEL CHEMIST under the authority of a duly issued license, Appellant did, on or about 10 April, 1949, while approaching land navigate said vessel at an immoderate speed during a period of limited visibility, and the second specification alleging that while serving as above on 10 April, 1949, Appellant failed to take proper precautions to prevent said vessel from stranding.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Appellant was represented by counsel of his own choice and pleaded "not guilty" to both specifications.

Both the Investigating Officer and the Appellant called and examined witnesses; Appellant testified in his own behalf. At the

conclusion of the hearing, the Examiner found the charge and both specifications "proved" and entered an order suspending Appellant's license for a period of six months from the 27th day of April, 1949.

From that order, dated 27 April, 1949, this appeal has been taken, and it is contended that the findings and conclusions of the Examiner are clearly erroneous in that no negligence was proved. In addition, it is contended that even if the Appellant could be held to be negligent, the order is clearly excessive.

Appearance: For Appellant - John Irwin Dugan, Esq., of New York City.

Based upon my consideration of the Record in this case, I hereby make the following:

FINDINGS OF FACT

At all the times hereinafter mentioned, Appellant was serving as master of the SS STEEL CHEMIST, under the authority of his duly issued License No. 4720.

On 9 April, 1949, the SS STEEL CHEMIST was enroute on a voyage from Honolulu to Los Angeles with approximately 8000 tons of cargo. The noon position of the vessel on 9 April was Lat. 31° 55'N, 125° 34'W; on a course of 071 degrees true which was changed to 076 degrees true at 1230. The noon position of 9 April had been determined by plotting back a sun line of position taken at 1600 that date to the noon latitude and crossing both sun lines. The course of 076 had been laid to take the vessel 1.4 miles off the south end of San Nicholas Island. About 0045, 10 April, 1949, fog set in; the master was called to the bridge; fog whistle signals were sounded; and engineroom telegraph was put on standby. From this time until 0655, 10 April (at which time the STEEL CHEMIST stranded on the west side of San Nicholas Island in position 33° 14.7' N, 119° 33.6'W) intermittent fog banks of varying density were encountered. The actual point of stranding was 4 1/2 miles to the north of the vessel's plotted course, and was 315 miles from the previous noon position. At the time of the stranding and for several hours prior thereto the vessel had been proceeding at an average speed of 16.7 knots. After 0430, the vessel's fathometer

was running continuously, and the only sounding received was 117 fathoms at 0450. At 0600 a doubtful position was obtained by radio bearing on Anacapa Beacon and Los Angeles Harbor Beacon. The fathometer was run continuously thereafter until the time of the stranding, and no further soundings were obtained. The minimum visibility throughout this period was about one mile, until a patch of fog was reached which limited the visibility to about 200 yards. *No change in course or speed was made.* At about the same time this visibility closed down, breakers were sighted ahead and the vessel grounded.

OPINION

Counsel for Appellant contends that if the course of 076 degrees true had been made good, it would have placed the STEEL CHEMIST at least 1 1/4 miles south of San Nicholas Island. It may be mentioned that Appellant himself admitted in his own testimony that a normal deviation in steering between 075 and 076 would have placed the vessel heading directly toward the island. In retrospect it may be noted that the course actually made good by the STEEL CHEMIST between the time the course was set at 076 degrees shortly after the previous noon position had been obtained and the time the vessel grounded was 075° 11'.

Such a deviation in steering over as long a period as 18 hours is to be expected under hand steering conditions and Appellant in setting his course to pass the island at such a close distance should have made allowance for such possible deviation, - particularly when visibility conditions became limited.

Appellant further urges that since the position obtained by the radio direction finder bearings placed the vessel actually south of the proposed course, and since the fathometer gave no indication of the approaching coast, it was entirely within the discretion of the Captain to determine at what speed he should proceed. It may be conceded that the element of discretion is present under such circumstances; however, when such discretion, as exercised, leads a vessel to a serious stranding, then proper authority will closely scrutinize the circumstances to determine whether or not the master has been negligent. Such was the reason for proceedings being instituted against Appellant in this case.

From my examination of the Record in this case I am convinced that Appellant was negligent in the navigation of the STEEL CHEMIST. The Record clearly shows that Appellant failed to take due warning from the notice given in the United States Coast Pilot (Pacific Coast) at page 72 wherein it is stated:

"San Nicholas Island: * * * The island is practically surrounded by kelp. At the western end of the island the kelp extends westward a bout three miles, covering very irregular bottom. Two reefs lie in the kelp extending about 1.6 miles westward from the western extremity of the Island. *In thick weather great caution must be exercised in approaching from westward, and vessels should in no case pass inside the kelp. No dangers are known to exist outside the kelp.*" (Underscoring supplied.)

Had the Appellant in this case been navigating his vessel at a moderate speed, as required by a proper apprehension of physical conditions to be met under given circumstances, the presence of the kelp alone would have been adequate warning to him that he was approaching the island. It must be pointed out that Appellant comes definitely within the warning stated above in that the STEEL CHEMIST was approaching the island from the *westward in thick weather*, and it cannot be said that great caution was used in making that approach.

I do not feel that much stress can be placed on the excuse that the fathometer *may* have been out of order when an examination of the chart plainly indicates that Appellant should have expected to get soundings within 9 miles of the shore. Not having obtained these soundings should have led Appellant to suspect that his fathometer was not functioning properly, or should have at least led him to make a check in that respect.

At this point it should be noted that the vessel was equipped with a deep sea sounding machine, but no effort was made to use it.

Counsel contends that navigation is not an exact science and similar statements were made when Appellant appeared as a witness in his own behalf. It would seem that Appellant's actions under

the circumstances were such that he did not follow his own belief. Having made this acknowledgement, it is impossible to understand why he allowed his vessel to approach the island at such excessive speed under poor visibility conditions when he was not positive of his navigational position. The record shows that Appellant knew that fixes obtained by radio direction finder bearings are frequently unreliable and particularly so when any bearing is taken over land or where the line of bearing runs close to land. In addition, it must be assumed that Appellant with his many years of experience knew of the phenomena known as "night effect" with its resulting distortion of radio bearings taken in the early evening and morning.

Appellant, in his testimony, stated that the fact that the fathometer recorded a sounding of 117 fathoms indicated to him that the vessel was approximately on the course line. However, the Report of Marine Casualty, as submitted by him, states at 0400, "position placed 2-3/4 miles north of course * * *. At 1450, 117 fathom mark noted, supporting the 2-3/4 northerly set. These written remarks are inconsistent with Appellant's statements on appeal and would seem to indicate that at the time Appellant was under the opinion that his vessel was being set to the north. The Report then continues to state that radio bearings placed vessel to "pass 4 miles south of the island." His earlier determination made on the basis of the soundings and the later determination made on the basis of the direction finder bearings should have indicated to him that something was wrong in his estimated position and that a slower speed and further serious consideration should be given to the chances of the vessel safely passing San Nicholas Island.

CONCLUSION

I find it impossible to escape the conclusion that Appellant navigated the STEEL CHEMIST in a negligent manner by proceeding at immoderate speed in reduced visibility conditions and under circumstances which presented a dangerous navigational situation. Appellant invited disaster by his neglect to take timely preventive actions. I conclude that there is substantial evidence to support the finding made by the Examiner.

FINAL ORDER

The order of the Examiner, dated 27 April, 1949, should be, and it is, AFFIRMED; and will be made effective as of the date Appellant surrenders the temporary license now in his possession.

MERLIN O'NEILL
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington , D. C., this 13th day of December, 1949.

***** END OF DECISION NO. 383 *****

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