

In the Matter of License No. 141 609
Issued to: EDGAR A. QUINN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

724

EDGAR A. QUINN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 28 August, 1953, and Examiner of the United States Coast Guard at Seattle, Washington, suspended License No. 141 609 issued to Edgar A. Quinn upon finding him guilty of negligence based upon one specification alleging in substance that while serving as Pilot on board the American SS BUNKER HILL under authority of the document above described, on or about 20 July, 1953, while said vessel was navigating inland waters of the United States, he negligently attempted to overtake the FV COLUMBIA in the vicinity of Buoy #21, Columbia River, by reason of failing to obtain consent from the overtaken vessel, which failure caused a casualty resulting in loss of life and the FV COLUMBIA.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. He was represented by counsel of his own selection, and entered a plea of "not guilty" to the charge and specification. Thereupon, the Investigating Officer offered in evidence a stipulation of the facts to which six

witnesses would testify if called, as well as nine exhibits offered at the original investigation of the case. In defense, Appellant testified in his own behalf.

When the hearing was concluded, having heard argument from the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification; and entered the order suspending Appellant's License No. 141 609, and all other licenses and/or documents issued to this Appellant by the United States Coast Guard, or its predecessor authority, for a period of four months. The order stated that the suspension should not be made effective provided no charge under R.S. 4450 (U.S.C. 239), as amended, is proved against Appellant for acts committed within eight months from the date of service of said order.

From that order, this appeal has been taken , and it is urged:

(a) The overtaken vessel, originally privileged, was obligated to maintain course and speed; and to not attempt to cross the bow or crowd upon the course of the passing vessel;

(b) The overtaking vessel should not be required to await an acquiescing signal from the overtaken vessel because fishing vessels never do respond to the whistle signals of ocean vessels.

APPEARANCE FOR APPELLANT: Erskine B. Wood, Esquire, of
Portland, Oregon.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 20 July, 1953, Appellant was serving as Pilot on board the American SS BUNKER HILL (which was then under enrollment), and was acting under authority of his License No. 141 609. At approximately 4:43 A.M., on said date, the BUNKER HILL collided with the small fishing vessel COLUMBIA in the Columbia River below

Astoria, Oregon. It was past the hour of sunrise, and conditions of the weather had no bearing on the casualty.

Shortly after 4:00 A.M., Appellant boarded the BUNKER HILL at the pilot station in the Columbia River off Astoria, Oregon, to act as pilot as she cleared the Columbia River Bar for sea. Proceeding down the ship channel from Astoria, at a speed of approximately 12 knots, Appellant, with the Master of the vessel and others on the bridge of the BUNKER HILL, saw the fishing boat COLUMBIA about a mile and a half away; they observed the course of the COLUMBIA and saw that she was also proceeding outbound for sea. By the time the BUNKER HILL had approached to three-quarters of a mile astern of the COLUMBIA, it had been observed that the COLUMBIA was on a steady course, and that she was approximately in the center of the ship channel, which, at this point, is approximately 1,500 feet wide. The COLUMBIA then bore slightly on the starboard bow of the BUNKER HILL, and it was decided to pass the COLUMBIA on its port side.

At between one-half to three-quarters of a mile distance, the BUNKER HILL blew two blasts to the COLUMBIA indicating the Bunker Hill would pass to port side of the fishing boat. The fishing vessel made no response to the BUNKER HILL's whistle signals; but this was not considered unusual because fishing vessels in this area seldom, if ever, do reply to the whistle signals of ocean vessels. As the fishing vessel bore slightly off the starboard bow of the BUNKER HILL, the latter, upon blowing the two-blast signal, changed course to the left five or six degrees; and for a short time thereafter, both vessels proceeded on their courses, which would have resulted in a routine passing. However, shortly thereafter, the fishing vessel made a substantial change of course to its left and appeared heading across the bow of the BUNKER HILL. The Pilot of the BUNKER HILL responded to this situation promptly by stopping the engines of that vessel, blowing a danger signal of four blasts, going full speed astern, blowing one blast, and ordering hard right rudder. The fishing vessel continued on its course to the left. The BUNKER HILL, responding to the full astern on the engines and right rudder, started to swing to the right, and the fishing vessel was seen to emerge clear on the BUNKER HILL's port bow, and the latter's engines were then stopped. However, shortly afterwards the fishing vessel again made a sudden sharp change in course to the right, directly across the bow of the BUNKER HILL. Appellant again put his vessel's engines full astern,

again blew the danger signal, but collision occurred; the stem of the BUNKER HILL striking the fishing boat on the starboard side abaft the cabin. At the moment of impact, the speed of the Bunker Hill was between six and nine knots.

The owner of the fishing vessel, Mr. Harold States, had retired to the cabin and the fishing vessel was being operated by a young man named Vernon Hart, who had no knowledge of the rules of the road or the meaning of whistle signals. He was in the pilothouse of the fishing vessel where he was unable to hear any whistle signals due to the noise of the engines (which were unusually noisy), and he had never been able to hear any whistle signals from other vessels for that reason. He never looked astern on this occasion to see if any vessels were approaching. The testimony is not harmonious respecting the courses steered by the COLUMBIA before Hart became aware of the presence of the BUNKER HILL; but I accept, and find as a fact that the COLUMBIA did change course first to the left, and then again to the right, this last change occurring immediately before collision.

Seconds before collision, Hart looked over his shoulder and observed the draft marks of the BUNKER HILL; he then grabbed the wheel with both hands and turned it - obviously, to the right and into the collision. At some time before the collision, he had left the wheel momentarily to investigate excessive noise in the engines by peering into the engine room to see if the sideboards were on the engine. Hart interprets the passing signals set forth in the Pilot Rules as signals to get out of the way.

The record shows that for some period of time before collision; those on the BUNKER HILL had observed the legs of a man standing at the wheel in the cabin of the COLUMBIA. It was fully appreciated that the BUNKER HILL was an overtaking vessel and the COLUMBIA was an overtaken vessel. The BUNKER HILL has a good, loud steam whistle, approved and passed by the U.S. Coast Guard.

Following the impact, the BUNKER HILL stopped her engines, and those on board rendered all possible assistance. The COLUMBIA was a total loss; and her owner lost his life in the disaster.

The Examiner found (and I approve such finding) that it is common practice of fishing vessels in the Columbia River to operate

on either the North or the South side of the channel and it is not common for them to operate in the center of the channel. Just before overtaking the COLUMBIA, Appellant had passed another fishing vessel, but as he was on the side of the channel, no signals were necessary or sounded.

Appellant has held a Master's license for twelve years; has operated as a Columbia River Bar Pilot for two years and there is no record of any prior disciplinary action against his license in either capacity.

OPINION

As a prefatory observation, I have noted the errors assigned by Appellant to the Findings of the Examiner; but I believe those inaccuracies have been corrected by my own Findings of Fact as set forth above. My Findings are, with changes necessary to conform to the Record, practically a restatement of the case as set out in Appellant's brief.

Some significance attaches to the structure of Appellant's brief, because it does not attempt to fix, by time, any of the incidents or any of the distances involved in the development of the situation which eventuated in disaster. I approve this practice because it is well known that the details of a materializing collision situation occur with such rapidity that all time and distance factors are necessarily approximate; a situation which has long since been judicially recognized. Mr. Justice Davis in *The Great Republic*, 90 U.S. (23 Wall.) 20,29, quite aptly remarked:

"Under the most favorable circumstances it is impossible to measure distance on the water with accuracy, but in times of excitement there is very little reliance to be placed on the opinion of anyone on this subject and especially is this so when the condemnation of a boat may depend upon it."

Appellant's commendably frank recognition of the BUNKER HILL's status as an overtaking vessel, and his obligations under the Inland Rules reduces the legal problems presented for my determination.

Did the Examiner ignore the obligations of the overtaken vessel, as originally privileged, to maintain course and speed and not to attempt to cross the bow or crowd upon the course of the passing vessel? I do not think the Examiner erred in this respect.

From a legal viewpoint, it is debatable whether or not the statutory duty to maintain course and speed had come into being for the governance of the COLUMBIA's navigation on this occasion. It is stipulated that Hart, who was responsible for the COLUMBIA's navigation at the time and was alone on deck, did not hear any whistle signals from the SS BUNKER HILL; nor did he sound any whistle signals after taking over the watch. No witness from the BUNKER HILL heard any signals from the COLUMBIA; and there was no evidence or other indication of action on the deck of the COLUMBIA that the man at her wheel knew the BUNKER HILL was in the vicinity. It is also agreed that Hart first learned of the presence of the BUNKER HILL when he looked over his shoulder and saw the draft marks on her bow. There is a line of judicial authority holding that the duty to maintain course and speed does not attach until the vessel ahead knows of, and has assented to the proposal of the vessel astern to pass. *The Industry*, 29 Fed, 29, 30 (2CCA), cert.den. 279 U.S. 837, sub nom *New York and New Jersey Steamboat Co. v. Schomburg*.

Appellant's second point urges the Examiner erred in holding Appellant was negligent in attempting to pass the COLUMBIA without having received a whistle signal from that boat in spite of his Finding that fishing boats never do respond to the whistle signals of ocean vessels.

I do not ascribe to the Examiner's decision the drastic and far-reaching consequences and effects described by Appellant. I do believe that any practice indulged by fishing vessels and others, in refusing or failing to answer whistle signals from larger or ocean vessels, is a violation of the statutory Rules of the Road, and requires correction. However, that is a subject for consideration apart from my decision on this appeal.

The record here is uncontradicted that the fishing vessels seldom, if ever, respond to whistle signals sounded by steam vessels proceeding outbound and inbound on the Columbia River.

But, Appellant's own testimony (R.25) does not inspire confidence that he, as a Pilot, had consistently obeyed the Rule. The law does not require overtaking steam vessels to "*usually try to blow to*" vessels which are intended to be passed. No contention is made that the practice mentioned has attained the sanctity of "custom" or "usage" - although after twenty-seven years of constant employment, such an argument might be expected. However, whether it be called "custom" or "usage" or "general practice," it is nevertheless contrary to the law; and being repugnant to the express provisions of a statute cannot be given any recognition.

"* * * In case of conflict between a local custom and a statutory regulation, the latter, as of superior authority must necessarily control." *Basey, et al. v. Gallagher*, 87 U.S. (20 Wall.) 670, 684; See also *Ramsauer, et al. v. United States*, 21 F2d, 907, 908 (9CCA).

Article 18, Rule VIII of the statutory rules for avoidance of collision on inland waters of the United States (33 United States Code 203), specifically discusses overtaking situations; and with startling clarity announced:

"* * * *under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when the vessel ahead shall signify her willingness by blowing the proper signals.*" (Underlineation supplied.)

As far back as 1875 (before the presently involved Rules were enacted), Mr. Justice Clifford, speaking for the Supreme Court in *The Sunnyside*, 91 U.S. (1 Otto) 208, 210, was considering navigation rules then in effect, and said:

"Rules of navigation are adopted to save lives and property; and they are required to be observed, and are enforced to accomplish the same beneficent end, and *not* to promote collisions."

The same theme has been announced reportedly by the courts which have had to consider these statutory rules as well as the so-called Supervising Inspectors' Rules.

There is no dispute in this Record that after Appellant sounded the two-blast signal when he was between one-half and three-quarters of a mile astern of the COLUMBIA, no signals were heard from the COLUMBIA; and Appellant sounded no further signals until he says he realized the COLUMBIA had "started to turn" across the bow of the BUNKER HILL. The COLUMBIA measures 9.1 feet breadth (see Merchant Vessels of the United States, 1951); so, in a channel fifteen hundred feet wide, it seems abundantly clear that Appellant had not *allowed a sufficient distance between his vessel and the COLUMBIA for a safe passing.*

This seems to be the pattern considered by Mr. Justice Clifford in *Whitridge, et al. v. Dill, et al.*, 64 U.S. (23 How.) 448, decided in 1859, where at p. 454, the Court cited Judge Betts' decision in *The Rhode Island* (1847):

"* * * In that case, it is said the approaching vessel when she has command of her movements, takes upon herself the peril of determining whether a safe passage remains for her beside the vessel preceding her, and must bear the consequences of misjudgment in that respect. No immunity is extended by the law to one possessing the greater speed; and so far from encouraging the exercise of the power to its utmost, the law cautiously warns and checks vessels propelled by steam against an improvident employment of speed, so as to involve danger to others, being stationary or moving with less velocity. *Olcott's Adm. R. p. 515.*"

The cases annotated under 33 United States Code 203 disclose the wide variety of situations and frequency of judicial consideration of this Rule. Judge Learned Hand remarked in *The Industry, supra*, with respect to the duty of the vessel ahead to determine the propriety of changing course:

"It must be confessed, however, that the authorities are by no means uniform, and that they cannot be altogether reconciled. * * *"

But, when the question of the overtaking vessel obtaining *permission from the vessel ahead* has become important, the weight of authority is overwhelming that the overtaking vessel's attempt to pass without having obtained that assent is a fault - which imposes sole, or as the circumstances of the case warrant, joint responsibility with the vessel ahead for collision. I have had a somewhat similar situation to consider on [Appeal No. 655](#); and there I said:

*"The V was clearly an overtaking vessel with respect to the L * * *. Therefore, the V was legally obligated to keep out of the way of the L * * *, to sound a whistle signal when still at a safe distance from the L * * *, and to await until the L replied with the same signal before attempting to pass her."* (Underlineation supplied.)

This case was decided on 12 June, 1953.

Appellant has cited no judicial authority to support the proposition which, in effect, would have me hold that because the law is disregarded by an unauthorized "custom," he should be excused for his failure to obey the same law. I am not prepared to make such a ruling; and, in the light of my own earlier decision, and the long line of adjudicated cases in the United States Supreme Court, the United States Courts of Appeal, as well as the District Courts, I can find no legal justification for any such holding.

Although the overtaking BUNKER HILL is not exonerated from fault, it is my opinion that the facts disclose many errors, on the part of the COLUMBIA, which were the primary causes of the collision. The COLUMBIA did not comply with the common practice of fishing vessels on the Columbia River to navigate along the side of the channel rather than near the center; the helmsman of the fishing vessel did not look astern before the vessel changed course

to the left, despite the excessively noisy engines which prevented him from hearing the two-blast whistle signal of the BUNKER HILL; the helmsman momentarily left the wheel without any one steering the fishing vessel; and the helmsman would not have known the meaning of the whistle signal if he had heard it, since he had no knowledge of the rules of the road. In short, the helmsman was manifestly incompetent and the condition of the engines required more than the ordinary precaution to keep a lookout for vessels approaching from astern.

It is considered that the charge of negligence is proved by the evidence that Appellant was attempting to overtake the fishing vessel without obtaining her consent. But in view of the many faults of the fishing vessel which contributed to the collision, the order of the Examiner dated at Seattle, Washington, on 28 August, 1953, is hereby

REMITTED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 25th day of May, 1954.

***** END OF DECISION NO. 724 *****

[Top](#)