

In the Matter of License No. 81731
Issued to: LAWRENCE J. DOEPFNER, Z-845262

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

807

LAWRENCE J. DOEPFNER

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 30 July 1954, an Examiner of the United States Coast Guard at San Francisco, California, suspended License No. 81731 issued to Lawrence J. Doepfner upon finding him guilty of negligence based upon three specifications alleging in substance that while serving as pilot on board the American SS GEORGE S. LONG under authority of the document above described, on or about 19 December 1953, and while piloting said vessel from Alameda, California to Martinez, California, in the Oakland Estuary Channel, upon observing the M/V SKAUBO's intention to enter the Estuary, he failed to exercise the due caution required by the special circumstances of the case to proceed at a moderate speed, he wrongfully and negligently failed to keep on his starboard side of the Channel, and after receiving a one-blast whistle signal from the SKAUBO subsequent to sounding a two-blast signal on his ship, he wrongfully and negligently failed to reduce immediately the headway on his vessel to the extent required to permit sufficient time for reaching an agreement by use of appropriate signals for passing with safety, such failures thereby contributing to or causing collision of the two

vessels. The first specification was modified by the Examiner so that it alleged negligence only from the time Appellant observed the intention of the SKAUBO to enter the Estuary, as indicated above, in lieu of the wording appearing in the specification that "upon sighting the M/V SKAUBO and being in doubt as to the destination of that vessel in so far as its navigation concerned you." The Examiner found the evidence insufficient to support two other specifications which alleged in substance that while Appellant was so serving and after sighting the M/V SKAUBO and knowing she was meeting his vessel in the Estuary Channel, he wrongfully and negligently attempted to pass to starboard of the SKAUBO, and that when meeting the M/V SKAUBO in the Estuary Channel, he wrongfully and negligently failed to establish a passing agreement with the SKAUBO, such failures contributing to or causing collision of the two vessels.

On the first day of the hearing, 3 June 1954, the Appellant was not present, but his counsel did appear and stated Appellant was aware of the hearing and expressly stated his willingness for it to proceed in his absence. Counsel also stipulated that in the absence of Appellant and inasmuch as Appellant was represented by counsel familiar with the laws and regulations involved, it would serve no useful purpose for the Examiner to give the usual opening explanation of Appellant's rights. Thereupon the hearing proceeded in absentia, and counsel for Appellant entered a plea of "not guilty" to the charge and to each specification proffered against Appellant.

The Investigating Officer then made his opening statement. Counsel for Appellant moved to dismiss the second, third and fourth specifications, but the motion was overruled by the Examiner after the Investigating Officer made a further statement.

The Investigating Officer introduced in evidence the testimony of Richard W. Harrison, the night mate and ship's officer on the flying bridge of the GEORGE S. LONG with Appellant at the time of the collision. When his testimony was completed, the hearing was adjourned, pending other witnesses becoming available.

On 8 July 1954, counsel for Appellant and the Investigating Officer appeared before the Examiner and offered in evidence the depositions of Jacob G. Jacobsen, Master, Alfred E. Eike, second

engineer, Harold Arnevig, third officer, Ole H. Braathen, motorman, Odd Pedersen, helmsman, and Jan Dovle, lookout, all of the M/V SKAUBO, with exhibits obtained during the taking of the depositions; and the depositions, less exhibits, of Anfin Rogenes, second mate, John J. Billay, chief mate, Rozelle F. Pollard, third assistant engineer, George P. Nelson, chief engineer, Clare P. Fleming, first assistant engineer, Charles D. White, lookout, Hjalmar Iwerson, helmsman, and John A. Erickson, carpenter, all of the SS GEORGE S. LONG. These depositions were admitted in evidence by the Examiner.

On 26 July 1954, the second and last day of the hearing proceedings, Appellant was present with his counsel. The Investigating Officer introduced in evidence the testimony of George E. Melanson, pilot of the M/V SKAUBO, and then rested his case.

Appellant took the stand and testified in his own defense.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced he would make his decision later. On 30 July 1954 the Examiner announced his findings, concluded that the charge had been proved by proof of three specifications, and entered the order suspending Appellant's License No. 81731 and all other valid documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of three months, subject to twelve months probation from 3 June 1954.

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

Grounds of Appeal

(1) It was error for the Examiner to modify the first specification without notice and without affording the person charged an opportunity to meet the new factual issue presented.

(2) The Examiner's proper conclusion that the third specification was not proved necessarily required the conclusion that the first and fifth specifications were not proved.

(3) The Examiner's proper conclusion that the second specification was not proved required a conclusion on the part of the Examiner that the fourth specification was not proved.

(5) The findings do not support a conclusion of negligence.

(6) The facts as disclosed by the evidence of all witnesses require the conclusion that the acts of the person charged were as required by law, and any other or different act would have been in violation thereof.

(7) The Examiner's finding of fact No. 16 is in direct conflict with the testimony of all witnesses and discloses the Examiner's basic misunderstanding of the maneuvering of the two vessels.

(8) The Examiner erred in holding as negligence the act and decision of the person charged in blowing the danger signal and then stopping and reversing, rather than stopping and reversing and then blowing the danger signal.

(8) The Examiner's finding No. 11, that the person charged based his judgment of the SKAUBO's course only on the showing of her green light, is incomplete, as such judgment was based as well on the observation of the SKAUBO's open range lights.

Counsel, in his memorandum brief, excepts to the decision of the Examiner as disclosing three fundamental errors, to wit:

(1) a basic misunderstanding of the course and maneuvering of the M/V SKAUBO;

(2) a tendency on the part of the Examiner to view the maneuvering of the two vessels from the viewpoint of the SKAUBO or from the viewpoint of a third person having prevision of the actions and intentions of both vessels; and

(3) erroneously treating the situation as one of special circumstances despite the fact that the relative situation of the two vessels clearly called for a starboard-to-starboard passing and despite the fact that the Investigating Officer, on a somewhat different view of the case, presented it as one for the application of the usual rules of the road and disclaimed that the case was one of special circumstances.

APPEARANCES: Francis L. Tetreault, Esquire, of Graham and Morse, San Francisco, California.

Based upon my examination of the record submitted, I hereby

make the following

FINDINGS OF FACT

On 19 December 1953, Appellant was serving as pilot on board the American SS GEORGE S. LONG and acting under authority of his License No. 81731.

On that date, the SS GEORGE S. LONG and the M/V SKAUBO collided near the southern side, western end of the Oakland Estuary, the port bow of the LONG coming in contact with the forward port side of the SKAUBO. The LONG was proceeding out of the Estuary and the SKAUBO had just entered it. Just outside the entrance of the Estuary, a strong tidal current of at least two knots was running across the face of the channel from northwesterly to southeasterly. At the time of the collision it was dark, with slight haze, negligible wind, and lights could be seen about 4 miles away.

The Oakland Estuary (shown on Coast and Geodetic Survey Chart 5535 as Oakland Inner Harbor Reach) is a narrow channel about 600 feet wide between the jetties forming its boundaries. The narrow channel extends some 400 yards westward from Oakland Harbor Light, and for deep draft vessels, another 350 yards westward because of shoals extending seaward from each jetty. (A narrow channel is a body of water navigated up and down in opposite directions, and not harbor waters where the necessities of commerce require navigation in every conceivable direction. *The Klatawa*, 266 F. 120).

Charts of the area reveal that the lights of San Francisco are not in line with the Estuary, Treasure Island lights are largely concealed by Yerba Buena Island, a high island with few lights at lower levels, while the lights of the Naval Air Station, Alameda, California are adjacent to the southern side of the Estuary.

The Appellant on the LONG was proceeding at approximately 10 knots down the center of the channel, when he saw the SKAUBO outside the Estuary some 2 miles distant. A minute or more after sighting the SKAUBO, Appellant saw her turn right toward the Estuary entrance. About a minute later Appellant blew 2 blasts, at which time the SKAUBO was one-half mile or more away and still outside the Estuary entrance. Upon blowing 2 blasts, Appellant

came left a degree or so, thus gradually arriving at the left side of the channel where the collision occurred. Some 5 to 15 seconds later Appellant heard the SKAUBO sound 1 blast. Appellant did not decrease the speed of the LONG but sounded the danger signal about 20 seconds later, followed immediately by a two-blast signal. In about 10 seconds the SKAUBO answered with 1 blast. Appellant saw or thought he saw the SKAUBO swing more to the right (Appellant's left), and about 30 seconds after his second two-blast signal, Appellant blew 3 blasts, and stopped and reversed engines, which action required approximately 30 more seconds. The collision occurred about 30 seconds thereafter. From the time of the first two-blast signal of the LONG until her engines were backed, the SKAUBO, without reducing her speed of 9 knots, crossed the bow of the LONG about one-fourth mile distant and entered the Estuary on the extreme southern side, where, upon hearing the LONG's 3 blasts, she too backed and sounded 3 blasts.

As for the course and lights of the SKAUBO, there is conflicting testimony. I find myself in a similar position to the judge in *The Bellhaven*, 72 F2d 206, who stated it has long been the custom of judges in admiralty cases to accept a story generally, rejecting the particulars, and mending its weaker spots to be plausible; otherwise, it would be quite impossible to reach a decision.

The SKAUBO approached Oakland Middle Harbor Lighted Gong Buoy ("Navy Supply Depot buoy") on a course of approximately 080°, showing her range lights and green side light to the LONG. The SKAUBO began a gradual turn to the right when about 300 feet south or southwest of the buoy. As this turn began, the pilot of the SKAUBO saw the green side light of the LONG over the starboard bow of the SKAUBO. The advance of the SKAUBO during the turn carried her on beyond the buoy. When nearly halfway between the buoy and Oakland Harbor Light, but south of a line between these two aids, the SKAUBO, being still a little on the left side of the channel which bears slightly northerly outside the Estuary, increased her rate of swing to the right, placing the South Jetty Light on her starboard bow, then decreased the swing to a very slow swing to the right, heading in a general way for a point just to the left of the end of the south jetty. When the more abrupt turn was in progress, both side lights were presented toward the LONG, then as she gradually settled down and began crossing the channel, only the red

light was available for the LONG personnel to see. (Appellant confirmed seeing the red light when the SKAUBO was so crossing in front of the LONG (R.58)). At the time of making the more abrupt change, the SKAUBO was entering the narrow channel extending beyond the jetties of the Estuary.

There is no prior record of disciplinary action having been taken against Appellant.

OPINION

In modifying the first specification, the Examiner apparently only intended to reduce the period of time during which Appellant was charged with negligence; however, if we substitute the words "upon sighting the M/V SKAUBO" for "from the time of observing the vessel's intention to enter the Estuary," and continue with "and being in doubt as to the destination of that vessel in so far as its navigation concerned you," it appears there is an inconsistency within the modified specification. If Appellant observed the vessel's intention, thus had knowledge of it, he could not also be in doubt as to its destination, when, as far as he was concerned at the time, the destination was the Estuary - not a particular side of the Estuary. On the other hand, if the Examiner intended in effect to substitute "upon observing the M/V SKAUBO's intention to enter the Estuary" for "upon sighting the M/V SKAUBO and being in doubt as to the destination of that vessel in so far as its navigation concerned you" then it appears to me there is a fatal variance since the modified specification alleges Appellant knew the SKAUBO's intention while the original specification alleges he was in doubt as to her intention. From the facts in this case, I am of the opinion that a prudent seaman would have reduced speed if either allegation were true, but I concur with Appellant's 1st Ground of Appeal that it was error for the Examiner to so modify the specification without notice and without affording Appellant an opportunity to defend against the modified specification. Obviously it is prejudicial to an Appellant to find a specification proved which specification is in itself inconsistent or which is materially changed.

As for Appellant's 2nd, 3rd, 4th, 5th and 6th Grounds of Appeal, I am not impressed. There is sufficient evidence and it is not inconsistent to find the 4th and 5th specifications proved even

though the 1st, 2nd and 3rd were not proved; in my opinion the record and findings do support a finding and conclusion of negligence; the acts of Appellant were in part required by law but the acts on which negligence was based were not required by law. Certainly any other or different act on the part of Appellant would not necessarily have been in violation of law.

In regard to Appellant's 7th Ground of Appeal I agree there is a conflict with the testimony of the witnesses to state that the port bow of the SKAUBO struck the port side of the LONG. What obviously happened here was an error in transcription of the Examiner inadvertently interchanged the names of the vessels (just as Appellant apparently inadvertently said "starboard" for "port" on page 61 of the record). I do not agree that it indicates a basic misunderstanding of the maneuvering of the two vessels. Elsewhere in his findings (Nos. 8, 10, 12, 15, 17), it is apparent the Examiner did understand the maneuvering of the two vessels.

Apparently Appellant misinterpreted the Examiner's opinion in Appellant's 8th Ground of Appeal. The Examiner did not infer that it was necessary to stop and reverse before blowing the danger signal, but that upon hearing the one blast from the SKAUBO, the LONG was obligated to stop and sound the danger signal (simultaneously, or nearly so), rather than merely to blow the danger signals and another passing signal, continuing on at full speed for some 50 seconds at least (my findings from the various testimony) before stopping or even reducing speed. Appellant was placed on notice by the one-blast "cross" signal of the SKAUBO of one of several things: (1) that she did not hear his initial two-blast signal, or (2) that the SKAUBO did not understand his initial two-blast signal, or (3) that the SKAUBO's whistle had failed after blowing one blast, or (4) that the SKAUBO deliberately "crossed" the LONG's signal for some reason. Under such circumstances to allow the LONG to run on at full speed was negligent as well as being contrary to 33 CFR 80.7(b). This rule is based on the second paragraph of the former Pilot Rule VII which was held valid in *El Isleo*, 308 U.S. 378, 1940 A.M.C. 1.

In *The Victory*, 168 U.S. 410, a case believed in point, the VICTORY, on the wrong side of the channel, blew two blasts not heard by the other ship. It was uncertain whether the other ship blew one blast or not. The VICTORY was held at fault for not

stopping and reversing in time.

If the LONG had stopped, it is not believed she would be considered at fault for doing so, as Appellant apparently contends in saying he would have been at fault had he done other than he did do. *The Freisland*, 76 F. 591.

"* * * A steamer should ordinarily slacken speed and, if necessary, stop and reverse: * * * if cross-whistles are blown (cases cited) * * *, if the navigator of one vessel is in doubt as to the course or intention of the other (cases cited) " - *Griffin on Collision*, p. 584-585.

"When circumstances require reversing, undue delay in doing so is a fault." *The Intrepid*, 48 F. 327, etc. *Griffin on Collision*, p. 586.

In *Compania de Navegacion Cristobal, S.A. v. The Lisa R. et al.*, 112 F. Supp. 501 (1953), Judge Wright, in deciding a Mississippi River case where a vessel's first signal went unanswered, she received an illegal cross signal and a danger signal, but maintained her course and speed until one minute before collision, stated:

"In this connection it may be well to repeat again the injunction of *The New York*, 175 U.S. 187 * * *, Perhaps, if mariners would read it again and again, it may finally come to have the desired effect:

`She should have stopped her engines after the second signal, and, if necessary to bring her to a complete standstill, have reversed them. Nothing is better settled than that, if a steamer be 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. (Citing cases). * * *

`The lesson that steam vessels must stop their engines in the presence of danger, or even of 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.'"

As for Appellant's 9th Ground of Appeal, I concur that the record shows (R. 54) that Appellant also saw the range lights, but as I understand the Examiner's finding he only meant that the red running light was not seen, and he omitted referring to the range lights. I agree with Appellant that any conclusion he reached concerning the movements of the SKAUBO were undoubtedly based on his observation of the range lights as well as the green side light.

As indicated *supra*, I disagree with Appellant's 1st Exception to the Decision that the Examiner misunderstood the course and maneuvering of the SKAUBO, and also that the Examiner had a basic misconception of the circumstances confronting Appellant. Nor do I find the Examiner tended to view the incident from the standpoint of the SKAUBO (Appellant's 2nd Exception) alone. For the purpose of this appeal I will accept as a test one only slightly modified from that proposed by Appellant. The test to be applied is whether Appellant exercised that degree of care and skill which a reasonably prudent and skilled pilot would have exercised having available to him only that knowledge which Appellant then had or should have had under the circumstances. *The Senator Rice*, 223 F. 524.

The SKAUBO's allowance for set of the tide was within reason which reason the Appellant admitted he knew though he denied it was necessary (R. 57 and 69); Appellant also admitted that when entering the Estuary and meeting traffic, one would attempt to stay as far south as one could (R. 58), "it is a practice to try and stay on the starboard hand" (R. 67), yet Appellant placed the LONG on the left side of the channel so that the SKAUBO could not enter that side safely. In *The Victory*, 168 U.S. 410, the court said that whether the vessels were crossing or not, the question "always turns on the reasonable inference to be drawn as to a vessel's future course from her position at a particular moment, and this greatly depends on the nature of the locality where she is at that moment."

It appears true that if the SKAUBO had maintained her supposed course of approximately 100°T. the vessels could have passed starboard to starboard (R. 56 and 63), but the SKAUBO would

probably have gone aground, as Appellant knew or should have known. The chart reveals also that the SKAUBO would probably have grounded on the northern shoal if she had steered approximately 100°T. and passed the buoy as close as Appellant estimated (R. 60), or if on 100°T. when the LONG blew two blasts and the SKAUBO "blanked out" the buoy. Obviously the SKAUBO would have to turn before getting within 100 feet of Oakland Harbor Light as a pilot with Appellant's experience should know.

To accept Appellant's testimony concerning the relative movements of the SKAUBO as seen by him, then the LONG must have been in the center of the channel where she could have given way to right or left, or as appears more likely, the LONG was well to the left of the center where she should not have been.

Appellant knew, or as a pilot should have known, that under the circumstances he believed to be confronting him and the SKAUBO that the SKAUBO would have to come right or go aground, that the SKAUBO was allowing for the tidal set, and that the SKAUBO should pass the LONG port to port, yet rather than abide by the Narrow Channel general passing rule he did not want to assume the SKAUBO would go on her own right side, but preferred to operate with whistles (R. 62). (See *The Piankatank*, *infra*.)

I do not agree with Appellant's 3rd Exception that the Examiner erroneously treated the situation as one of "special circumstances." I find nothing in the record to indicate the Examiner so considered the matter, and in my opinion it was not initially a case of special circumstances.

In *The Oregon*, 158 U.S. 186, 202, the court said exceptions to the Rules "should be admitted with great caution, and only when imperatively required by the special circumstances of the case." In Farwell's *Rules of the Nautical Road*, Revised Edition, page 336, there appears:

"That the ordinary rules do not govern close situations is a popular fallacy among mariners. The courts have repeatedly held that these rules do hold and must be obeyed as long as it is reasonably possible for them to

prevent collision. They have also held that rules may not be disregarded on the plea of special circumstances if an alleged danger is too distant, or it is suspected that a privileged vessel is not going to perform her duty, * * *."

The courts have recognized five special circumstances:

- (1) Where the situation is *in extremis*.
- (2) Where other apparent physical conditions make obedience to the ordinary rules impracticable.
- (3) Where ordinary rules must be modified because of presence of a third or other additional vessels.
- (4) Where the situation is not specifically covered by the rules.
- (5) Where one of two vessels proposes a departure from the rules and the other assents.

I would certainly not presume to enlarge on the special circumstance situations. None of the above is applicable as far as these charges are concerned. In passing, it is observed that concerning No. 2 above, the tide conditions in this case would increase, rather than decrease, the necessity of both ships abiding by the Narrow Channel Rule. The navigation of a vessel on the wrong side of a channel because of a favorable ebb tide is not a special circumstance for such vessel.

The Transfer No. 10, 137 F. 666.

I do not agree that Appellant should have favored the left side of the channel, should have proposed a starboard to starboard passage, or would have been wrong had he done otherwise. It was stated in *The Piankatank*, 87 F2d 806, that departure from navigation rules because of special circumstances "is only permitted where it is necessary in order to avoid immediate danger, and then only to the extent required to accomplish that object." Elsewhere in the same case:

"Where two courses are open to a vessel, one to follow

prescribed rules and the other to depart from them, duty is imperative to observe rules and to assume that an approaching vessel will do likewise until after danger has become so manifest as to show there is no proper choice of judgment other than that of departure from the rules."

The existence of danger not imminent, though perhaps near, will not excuse a departure (LaBoyteaux, *The Rules of the Road*, page 173). When a vessel deliberately and without necessity goes on the wrong side of the channel, it will probably be held at fault for damage resulting thereby. (The *Georgic*, 180 F. 863, 869)

In referring to the words "when it is safe and practicable" in the Narrow Channel Rule (33 CFR 80.10), LaBoyteaux says, page 162-163: the words

"was intended to cover the reasonable necessities of practical navigation * * *. If navigation is not safe and practical on the right side of the channel, the necessary deviation therefrom is permitted, subject, however, to the requirement that the vessel return as soon as possible to her right side."

(See also *The Three Brothers*, 170 F. 48, at page 50). It is true that courts also enforce the starboard-to-starboard passage when the circumstances call for it (Farwell at page 259; *Matton Oil Transfer Corp v. The Greene*, 129 F2d 618), but I do not agree such were the circumstances here. In my opinion the courts do not sustain Appellant's contention that the starboard-to-starboard rule outweighs the narrow channel rule. Appellant admitted a port-to-port passage could have been made at the time he blew his first two-blast signal; therefore he was in no imminent danger justifying his departure from the basic Narrow Channel Rule.

"The Narrow Channel Rule is of peculiar importance because of the danger incident to passing in narrow waters and because of the especial need that each vessel may be able to rely on the other's obedience to the rule.

"Fuller, C. J., in the *Victory*, 168 U.S. 410 at 426 (1897):

`Each of these vessels was entitled to presume that the other would act lawfully; would keep to her own side; * * *.'" *Griffin on*

Collision, page 89.

"The general rule is to pass to the right * * *. Cases where you are entitled to pass starboard to starboard are when two vessels are approaching each other on lines each of which is so far to starboard of the other as to justify the exception to the general rule." *The Transfer No. 10*, 137 F. 666.

The case found most nearly in point with this case is *The Klatawa*, 266 F. 120, both vessels being found at fault, where each vessel was initially on the starboard hand of the other, one vessel was entering a narrow channel and the other was in the channel, apparently on the wrong side. In that case it was stated that the crossing rule had no application and that:

"A vessel intending to enter a narrow channel should so maneuver on approaching the entrance as to leave ample room for outcoming vessels to pass port to port, approaching the channel from the side she must keep after entering; and a vessel leaving a narrow channel should pass out, keeping to its starboard side of the channel, until she is well clear of the entrance, and should not change her course to port until she is well clear of vessels passing in."

(Also see *The Johnson*, 76 U.S. 146).

In commenting on the situations occurring at the entrance of narrow channels, LaBoyteaux, page 166, has this to say:

"At the entrance to narrow channels either Article 19 (Crossing Rule) or Article 25 (Narrow Channel Rule), or both, may be operative and vessels * * * leaving from their own proper side may save themselves some very anxious and trying moments as to what rule is applicable, by adhering to the practice above suggested." (See quotation from *The Klatawa*, *supra*).

LaBoyteaux, page 165, states further:

"A vessel in her right water must assume that a vessel approaching on the wrong side of the channel will obey the rules and cross over to her proper side, but if such vessel continues to approach on the wrong side, the safer maneuver for the other vessel is to stop and reverse."

In my opinion Appellant should have kept to his right, in spite of his contentions, for until danger was imminent he would not be held at fault for doing so. *The Queen Elizabeth*, 122 F. 406.

If Appellant had affirmatively shown that the LONG's being in the wrong water did not contribute to the collision, then Appellant's citation of *The Bellhaven*, *The Wrestler*, *La Bretagne*, and *The Delaware* might be convincing, but the violating vessel would be held liable if difficulties of navigation, arising from other causes, are increased by her navigating on the wrong side. *The Benjamin Franklin*, 145 F. 13; *El Sol - Sac City*, 72 F2d 212. In the latter case, *The Bellhaven* was distinguished, saying, among other things:

"There must be some limit to the impunity with which the narrow channel rule may be disregarded."

(Also see *The Acilia*, 120 F. 455; *The Yoshida Maru No. 1*, 20 F2d 25). The same circuit judge in *The Wrestler* case cited by Appellant (198 F. 583) held in another *Wrestler* case (232 F. 448) that she was at fault for being on the wrong side, but the Circuit Court of Appeals reversed on other grounds.

I, of course, agree with Judge Learned Hand that the rule does not require one vessel to start across the other's bow when *danger is imminent*, but the LONG, in a narrow channel and when it was safe and practicable to keep on the starboard side should have followed the Narrow Channel Rule (33 CFR 80.10) until danger became imminent. By the *time* danger became imminent, the SKAUBO would have been on her own side or clearly passing to port. 33 CFR 80.4 is not primarily designed for narrow channels and only has limited application to the LONG - SKAUBO circumstances.

Vessels on opposite courses in a narrow channel ordinarily pass eventually from head to head positions, or nearly so, regardless of their relative positions while some distance apart and while following the courses of the channel; the fact that 33 CFR 80.4 itself says the head to head rule is not applicable when one green light is opposed to another does not require vessels to pass starboard to starboard in a narrow channel.

CONCLUSION

For reasons stated herein, the first specification as modified by the Examiner is hereby dismissed. Since the negligence here relates to Appellant's serving as a pilot, I do not deem it appropriate to suspend any documents other than his pilot's license. The Examiner's findings of negligence from the proof of the remaining two specifications should be upheld.

ORDER

The order of the Examiner dated 30 July 1954 at San Francisco, California, is hereby modified to a suspension of Appellant's License No. 81731 for a period of three months. The suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed within twelve months from the commencement of the hearing on 3 June 1954.

As so MODIFIED, said order of 30 July 1954 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 13th day of May, 1955.

***** END OF DECISION NO. 807 *****

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