

In the Matter of License No. 72214
Issued to: LESTER MUMPETON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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LESTER MUMPETON

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

On 10 April, 1950, an Examiner of the United States Coast Guard at New York City suspended License No. 72214, issued to Lester Mumpeton, upon finding him guilty of "negligence" based upon two specifications alleging in substance, that while serving as Master on board the American S. S. RAPHAEL SEMMES, under authority of the document above described, on or about 13 January, 1950, while in the vicinity of Ambrose Channel Lightship, he navigated said vessel at an immoderate speed in fog and failed to exercise due prudence and caution in approaching Ambrose Lightship in fog, thereby contributing to a collision with the Lightship.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. He was represented by counsel of his own selection and he entered a plea of "not guilty" to the charge and each specification.

Thereupon, the Investigating Officer and counsel made their opening statements before the former introduced in evidence the

testimony of the Second Mate on the SEMMES and three documentary exhibits. He then rested his case.

In defense, Appellant offered in evidence the testimony of the Master of the Ambrose Lightship and also testified under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of both specifications and entered an order suspending Appellant's License No. 72214 for a period of three months on twelve months' probation from 31 March 1950.

From that order, this appeal has been taken, and it is urged that the Examiner failed to find that the collision was an inevitable accident; he improperly found that the specifications were "proved" and that Appellant was guilty of negligence; and he improperly found that the speed of 3.5 to 4 knots was excessive and a violation of Article 16 of the International Rules of the Road.

APPEARANCES: Messrs. Hagen, Senecal and Eidenbach of New York City James N. Senecal, Esquire, of Counsel for Appellant

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

FINDINGS OF FACT

On 13 January, 1950, Appellant was serving as Master on board the American S. S. RAPHAEL SEMMES, under authority of License No. 72214, while said vessel was enroute from Philadelphia, Pennsylvania, to New York City. From 1600 on this date until 1644 when the SEMMES collided with the Ambrose Lightship, Appellant was on the bridge in charge of the navigation of the ship. The ship's Second Mate was the Watch Officer and, between these two times, he was engaged mainly in taking radio bearings by means of the ship's direction finder. There was a lookout posted up to the time of the collision.

At 1600, the SEMMES was proceeding towards Ambrose Lightship on course 007 degrees true at full speed ahead making 80 RPM. At 1610, the Watch Officer obtained a fix by bearings, taken on radio beacons located at Fire Island and on the Ambrose Lightship, which indicated that the Lightship was dead ahead of the SEMMES. The Watch Officer told Appellant about this fix as well as about subsequent bearings obtained up to the time of collision. At 1610, Appellant altered course to 003 degrees true but the radio bearings continued to indicate that the Lightship was still dead ahead or only slightly on the starboard bow.

At about 1630, as the visibility began to close rapidly, the mate obtained another fix by bearings from Fire Island and Ambrose Lightship which placed the SEMMES two miles south of the Lightship and on a course heading directly toward her. This was reported to Appellant. At 1635, visibility was zero and the ship's speed was reduced to half ahead with the engines turning 40 RPM, a speed of approximately 7.5 knots over the ground. At about 1642, Appellant and the mate heard a fog signal which seemed to be coming from some distant location slightly off the starboard bow of the SEMMES but neither of the two men could distinguish the source of the signal. No reduction was made in the ship's speed at this time.

At 1643, the ship's speed was reduced to slow ahead with the engines turning 20 RPM, making the ship's speed over the ground between three and four knots. Shortly after this change of speed, Appellant observed a white light, which later proved to be on the Lightship, about a hundred feet slightly off and under the SEMMES' starboard bow and he ordered the wheel hard left but ordered no speed change. Seconds thereafter, at 1644, the starboard bow of the SEMMES came into contact with the starboard bow of the Lightship which was heading in a southerly direction at the time of contact. The SEMMES slid along the starboard side of the Lightship and, at 1645, Appellant ordered the engines of the SEMMES to be put full astern; at 1645 1/2, he ordered them stopped; and, at 1646, he put the engines full ahead in order to clear the Lightship.

It was then ascertained that no one had been killed or injured and the Ambrose Lightship was in no danger. Thereupon, Appellant anchored the SEMMES to await the lifting of the fog which had remained very dense up to and including the time of the collision. The ocean was calm except for several long small swells.

From 1600 until the time of the collision, the radio beacons on Ambrose Lightship and on Fire Island were in continuous operation and the Lightship had been blowing the regulation fog signals and showing the proper lights.

It was later determined that the Lightship sustained damage to her fore and aft rigging while the SEMMES suffered no damage as a result of the collision.

OPINION

Appellant urges that this collision was an inevitable accident brought about by the sudden fog and the fact that the fog signals of the Ambrose Channel Lightship were not audible at a greater distance. Therefore, it is contended the speed of the SEMMES was not excessive and Appellant was improperly found guilty of negligence since he could have stopped his ship in time if he had heard the Lightship's fog horn sooner.

The Examiner, in his opinion, has adequately covered most of the points raised in this appeal. I am in accord with his decision that Appellant was navigating the SEMMES at an immoderate speed, under the existing dense fog conditions, and that he acted imprudently in approaching the Ambrose Channel Lightship as he did in view of the information at his disposal.

Whether a collision is inevitable is a question of fact governed by the circumstances of the particular case in question and the standard of care required. In the present case, the evidence shows that the Lightship was anchored on station and observing the prescribed regulations as to lights and signals; Appellant knew he was approaching the Lightship; there was a very dense fog which prevented Appellant from seeing the Lightship until it was only one hundred feet from the SEMMES; and the SEMMES collided with the anchored Lightship about a minute after Appellant had ordered a change of speed from 7.5 to about 4 knots.

It is well known that when a ship is lying properly at anchor, she has the highest degree of privilege. Because an anchored vessel is usually quite helpless to avoid collision, a moving vessel is presumed to be at fault if she collides with an anchored

vessel. This presumption may only be overcome by proving that the accident was caused by the fault of the anchored vessel or was inevitable. The fact that the Lightship was properly functioning eliminates the first of these two possibilities leaving only the question as to whether this collision was inevitable.

The standard of care required by Appellant was increased by the fact that the fog was very thick during the last nine minutes before the accident. The burden imposed on a moving ship which strikes an anchored vessel gives rise to the presumption that the SEMMES was proceeding at an excessive speed since the motion of the SEMMES was undoubtedly a contributory cause to the collision. Appellant has failed to refute this rebuttable presumption of fault. To do so would require that he affirmatively prove that the speed of the SEMMES was justified; and the fact that she could not be controlled at a lower rate of speed is not a satisfactory excuse. *The Pennsylvania (1873)*, 19 Wall. (86 U.S.), 125, 134.

Appellant was fully warned by the radio bearings that the SEMMES was approaching the Lightship on a collision course. Simple calculations based on the varying speeds of the ship and the 1610 fix disclose that Appellant should have known his vessel was in the immediate vicinity of the Lightship. Yet, from nine minutes until one minute before the accident, he navigated the ship at about seven knots when visibility was nil. In a fog, a ship is bound to observe unusual caution and to maintain only such a rate of speed as would enable her to stop before colliding with another vessel seen through the fog. *The Nacoochee (1890)*, 137 U.S. 330. In the latter case, a steamship was held responsible for a collision on the high seas when proceeding in a fog at the rate of seven knots.

That the defense of inevitable accident should not be sustained in Appellant's case is best shown by *The Fullerton (1914)*, 211 Fed. 833. In that case, a ferryboat was proceeding in a dense fog at the rate of seven knots and collided with an anchored vessel whose position was known to those navigating the ferryboat. It was held that the collision could not be attributed to inevitable accident but was due to the fault of the ferryboat in moving at a speed which was excessive and negligent under the

circumstances. Similarly, it is my opinion that Appellant herein was guilty of negligence.

ORDER

The Order of the Examiner, dated 10 April, 1950, should be, and it is, AFFIRMED.

Merlin O'Neill

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington D. C., this 4th day of October, 1950.

***** END OF DECISION NO. 461 *****

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