IN THE MATTER OF LICENSE NO. 248370 MERCHANT MARINER'S DOCUMENT NO. Z-912727 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Nicholas CAMENOS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1697

Nicholas CAMENOS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 December 1966, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman's documents for six months upon finding him guilty of misconduct. The specifications found proved allege that while serving as Master on board the United States SS ALDINA under authority of the document and license above described Appellant:

1) on or about 7 November 1964 at Freeport, Bahamas, wrongfully ordered third mate Woycke to make a false entry of the draft on arrival in the deck log;

2) on the same date sailed the vessel from Freeport with the applicable load line unlawfully submerged; and

3) between 31 December 1964 and 25 March 1965, wrongfully operated the vessel with an expired certificate of inspection.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records and inspection records of ALDINA, the vessel's load line certificate, and the testimony of certain witnesses.

In defense, Appellant offered in evidence his own testimony and that of a witness, and certain documents.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months.

The entire decision was served on 21 December 1966. Appeal was timely filed on 12 January 1967 and was perfected on 29 August 1967.

FINDINGS OF FACT

On all the dates in question, Appellant was serving as Master of the United States SS ALDINA and acting under authority of his license and document.

ALDINA departed New Orleans, Louisiana, at 0430 on 4 November 1964. On the morning of 7 November 19648 the vessel arrived at Freeport, Bahamas. The third mate took forward and after draft readings while circling the anchored vessel in a launch. The readings which he made and recorded on paper were 29' 11" forward and 28' 11" (average) aft. The third mate did not observe the plimsoll marks on either side. When he showed his readings to Appellant, Appellant told him to enter the drafts in the deck log as two inches less than he had observed. Pursuant to order he entered in the log readings on 29' 09" forward, 28' 09" aft, giving a mean of 29' 03".

At Freeport the vessel took aboard 950 tons of fuel and 205 tons of water. (The Examiner found that the vessel took aboard 205

tons of water. In his brief on appeal, Appellant asserts that he took aboard 280 tons of water. Since the lower figure favors Appellant, I will accept it.) Thus, there was a total of 1155 tons of fuel and water taken aboard that day.

For ALDINA, the tons per inch submergence figure is 74. The submergence attributable to the loading at Freeport is 15.6".

There is no evidence as to who read draft marks on departure from Freeport after loading. Marks were entered in the deck log as 31' forward, 30' 06" aft, giving a mean draft of 30' 09" on sailing. The Official Log Book shows a sailing draft of 30' 09" and 30' 03" aft, giving a mean of 30' 06" on sailing. There is also no evidence that anyone looked at the plimsoll marks. The actual mean draft on leaving Freeport was either 30' 09" or 30' 09.5".

At the time of sailing from Freeport, with Summer load line conditions applying, the required freeboard of ALDINA was 9' 9 1/2". This permitted a mean draft of 30' 04 1/2".

On 12 December 1964, at Bombay, India, Appellant notified the American consul that the certification of inspection of his vessel had expired and asked for an extension. He was advised that extension could not be granted in a foreign port.

At Tunis, Appellant was given the same advice.

The certificate of inspection of ALDINA, which sailed from New Orleans on 4 November 1964, expired on 30 November 1964. When the vessel was at Venice, Italy, on 18 January 1965, the Coast Guard Merchant Marine Detail Officer from Naples advised Appellant that he was sailing the vessel on an expired certificate of inspection, and made a record of this fact in the vessel's Official Log Book. Appellant advised this officer that his company's orders required him to continue the voyage.

(The Examiner made no finding of fact to this effect, although his "Opinion" reflects that it occurred and the evidence of the record shows that it occurred. I take official notice also that this officer was a member of the staff of the American consulate at Naples, Italy.)

ALDINA did not return to the United States until 15 March 1965.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Grounds for appeal are urged as to all specifications found proved.

Briefly stated, Appellant urges that:

1) with respect to the specification alleging orders to make a false entry of draft record in the deck log, there is no evidence that the order was wrongful, nor that the entries were false;

2) with respect to the specification alleging unlawful submergence of leaving Freeport there is no reliable evidence of any kind to deduce the ship's condition on leaving Freeport; and

3) Appellant did not commit an act of "misconduct" by sailing on an expired certificate of inspection.

Just as Appellant's brief elaborates more fully on these basic grounds, more elaborate consideration will be given in "*OPINION*" below.

Appellant also argues that even if the Examiner was correct in his findings the "penalty" was too revere.

APPEARANCE: Schwartz and O'Connell of New York, New York, by Burton M. Epstein, Jr., Esq.

OPINION

I

On the question of Appellant's order to the third mate to

lower the draft readings by two inches, Appellant had this to say:

> "Capt. Camenos admitted that he instructed the third mate to correct the reading by the same two inches before it was entered in the log book" (Brief, p. 3), and;
>
> "Capt. Camenos credibly testified that the calculation that he had made considering the cargo that had been loaded indicated that the draft readings which the third mate had brought him were incorrect." (Brief, p. 4)

The brief also argues, somewhat puzzlingly, that one of the reasons Appellant had given to the third mate for believing that his draft readings were wrong was "that the draft taken in New Orleans on departure may have been incorrect, due to the location of the vessel at the pier side". It completely escapes one how an erroneous draft reading at New Orleans on 4 November could have induced an improper visual observation three days later.

However, it is interesting, for the moment to go back to the New Orleans departure draft question because, as will be seen later, calculations by the Examiner had much to do with his findings on the unlawful submergence specification, and because it illustrates the confused theories of Appellant both at hearing and on appeal.

Both the deck log and the Official Log Book entries give the actual draft on leaving New Orleans as 30' 11c forward and 30' 05" aft, with a mean of 30' 08".

At hearing, Appellant testified that his draft on leaving New Orleans was " five or six inches lighter than the summer draft". R-230. The summer draft was 30' 04.5". If the vessel was in the condition described by Appellant, then its draft in seawater would have been 29' 11.5". With the added submergence of 8.25" for the vessel's being in fresh water at New Orleans, this means that the observable and recordable draft would have been 30' 7.75". With the scope of Appellant's own words, it can be seen that the "error" he asserts in the New Orleans reading, as recorded in the log, could have been one quarter of an inch.

At the same page of the record, Appellant's counsel pinned him down. "Q. Captain, you testified that when you left New Orleans,

the vessel was about five inches light. A. Yes." *Support for this testimony was then adduced by reference to the very log entry referred to above*.

There is no merit to Appellant's claim that the New Orleans draft record was erroneous. There is even less to his argument that such an error induced a misreading of the draft at Freeport by the third mate.

As to the calculations said to have been made by Appellant (but not produced at the hearing) which led him to think the third mate in error at Freeport, his argument must be rejected out of hand. If his calculations proved that New Orleans draft record, and hence the Freeport observation, to be erroneous, he contradicts himself because his sworn testimony proves the New Orleans record to have been correct.

The question of computation of draft versus observation will have to be returned later, but Appellant fails completely when he attempts to rebut the significance of an actually observed draft by reference to unproduced calculations.

II

Appellant urges also that the Examiner was forced to find a wrongful order to enter a false record because he wanted to find an unlawful submergence on departure from Freeport. Since the Examiner found an unlawful submergence of 9.5 inches on departure from Freeport, Appellant argues, an order to change a reading by two inched would be without wrongful motive because the two inch difference he ordered would not have helped him in covering up an unlawful submergence of over nine inches. I must agree that the means would not adequately "cover up" a 9.5" unlawful submergence, but many devices could be utilized together and, when all were added up, the desired violation could be achieved. The embezzler is lucky who has to change only one digit in one record to make good his wrong doing.

But the "motive" here is no longer seriously in question. Appellant admits that he required the reading of the draft to be

made. He admits that he ordered a different reading to be entered in the log. He has offered no valid reason for believing the actual visual reading was wrong that he ordered the chief mate to make another reading and ordered the third mate to go with him, and then enter the correct draft in the log, he admits that no one carried out any such order. R.-231. He allowed the entry to stand.

An entry which does reflect the observed drafts is a false entry and an unjustified order to make such an entry is an improper order.

III

With reference to the alleged unlawful submergence on leaving Freeport, the Examiner has said, "To determine whether or not the vessel was improperly submerged [when it left Freeport] we must start with the ship's load line figures at the time she left the port of New Orleans on 4 November 1964." This he followed with a statement of the recorded draft at New Orleans, an application of the fresh water allowance, an application of the TPI submergence figure to consumption of fuel and water from New Orleans to Freeport, with a resultant computed mean draft on arrival at Freeport of 29' 10.25".

When TPI submergence figure is then applied for the taking on of 1155 tons of fuel and water at Freeport, this gave the Examiner a mean draft on departure from Freeport of 31' 02". With an allowable mean draft of 30' 04.5", this meant an unlawful submergence of 9.5 inches.

For several reasons, I do not believe that all of this computation need be resorted to. First, the Examiner, to determine the gain in freeboard between New Orleans and Freeport utilized expenditure figures beginning with 5 November 1964. But the vessel got underway from New Orleans at 0430 on 4 November. almost twenty hours of expenditure of fuel and water are thus not accounted for in computation of draft on arrival at Freeport. There is evidence in the incomplete log entries of ALDINA of the expenditure of fuel during these hours although not of expenditure of water.

Further, the Examiner accepted as true the testimony of the

third mate to the effect that Appellant ordered him to deduct two inches from his draft readings on arrival at Freeport before entering them in the log. (This testimony is referred to as a "deposition", but actually it was taken in earlier sessions of the hearing before another Examiner who then granted a change of venue. Reference to this testimony as taken by "deposition" leaves us with the result that Appellant's pleas were also taken "by deposition". This is obviously not true. The Jacksonville record should have been the basis for the addition of the New York record and not been made an "exhibit". There were no "depositions" used in this case, and the pleas were entered on the record before an Examiner, not by "deposition". The error is not, however, prejudicial to Appellant.) The entries that this witness falsely placed in the deck log showed a draft of 29' 09" forward and 28' 09" aft, with a mean of 29' 03". If this witness is believed, then the drafts that he actually read came to a mean of 29' 05".

It seems that if a witness testifies to having been ordered to enter a two inch discrepancy in draft readings and is believed, so that a person charged can be found to have ordered the making of a false entry, then the witness must also be believed as to the readings which he actually made. It seems also that reliable eyewitness testimony as to the draft of the vessel on arrival at Freeport is more persuasive of the true draft than a computation which omits 20 hours of sailing time.

For this reason, I accept the 29' 05" observed mean draft on arrival at Freeport as the actual draft of the vessel. To this we add the additional draft caused by the taking aboard at Freeport of 1155 tons of fuel and water. The Examiner computes the addition to the draft as one foot, three and seven eights inches (Finding 38). Independently, I compute the additional submergences as one foot and 3.6 inches. This still gives a mean draft on departure from Freeport, using the observed drafts on arrival as a base, of 30' 08.5". these figures give an overload of four inches.

IV

But even this was not needed to find the specification alleging unlawful submergence proved in this case. The record in the Official Log Book, required by law shows a mean draft leaving Freeport of 30' 06". The record in the deck log, contradicting the

Official Log, shows a mean draft on leaving Freeport of 30' 09".

Since this is not a penalty proceeding, the amount of unlawful submergence is not material. It is the fact of unlawful submergence that counts.

The Official Log Book and deck log entries here record mean drafts that establish *prima facie* a case of unlawful submergence.

V

It is a matter of some concern here that the officer assigned to read the drafts at Freeport testified that he did not look at the plimsoll marks at all. Since the load-line certificate clearly indicates the distances between the marks established an observer of drafts can just as easily estimate, at the same time, the clearance or submergence of the applicable plimsoll line. It could well be held negligence if a responsible officer fails to look at the plimsoll mark.

It may be noted here that Exhibit 3, the page of the Official Log Book of ALDINA containing the draft and load line statistics of the vessel shows that departure from Freeport the drafts, as mentioned before, were recorded as 30' 09" forward, 30' 03" aft. The entries in the column headed "Load Line Marks" are 30' 06" and 30' 06". What Appellant meant by these entries is not known. They look like draft figures, but they are different from the entries under "Draft". It is possible that they meant "mean draft". It is to be hoped that the newer form of Official Log Book makes it crystal clear that this column is designed to reflect freeboard by indicating the amount of immersion into water. The importance of observation of the plimsoll mark when drafts are taken is emphasized.

In any event, apart from computation, the Official Log Book here, without more, establishes the unlawful submergence of the vessel on leaving Freeport, and no contradicting evidence has been submitted.

Either on computation from the observed draft on arrival at Freeport to which is added the TPI submergence for fuel and water

taken aboard at Freeport, or on the Appellant's official record of his draft, or the deck log's record, the vessel was overloaded.

VI

At hearing, Appellant anticipated that he might have to defend against the *prima facie* evidence in his Official Log Book.

In Appellant's testimony on examination by Counsel, there appears the following with respect to Exhibit "3", the Official Log Book entries as to drafts:

> "Q. I point to the line marked `Freeport', dated November 7th, 1964. could you tell me from this line what the load line is - I'll withdraw that. The line marked `Freeport' is under the column "Port of Sailing", is this the reading when the vessel sailed from Freeport?
>
> "A. That's supposed to be the readings on the ship itself when it sails from Freeport?
>
> "Q. On the third and forth entries - the last two entries on the `Freeport' line and ask what is on that line.
>
> "A. On the line - 30' 9" forward, 30' 3" aft, mean draft: 30' 6".
>
> Q. Now, Captain, from this government exhibit 3, does that indicate that there was an excess?
>
> "A. On the way that it is shows that there is, yes.
>
> "Q. Do you know whether this is the actual reading at Freeport?
>
> "A. This is the one on the ship's log, which I transferred. I can't change it, so I transferred the same thing and I put it in the official log. It was a mistake from the beginning.

"Q. In other words, it is indicated by this official log entry that you were overloaded according to the applicable load line?

"A. According to what my officer put on the ship's log."

R-232, 233.

What Appellant was trying to do at hearing, and is persisting in attempting on appeal, is almost incredible in its inconsistency. First, a justification is offered for ordering a change of draft reading on arrival at Freeport on the grounds that Appellant knew the reading was wring. Then, the dialogue between Counsel and Appellant just above shows that he felt bound to make entries in the Official Log Book because they had been entered in the deck log, even though he knew they were wrong, just as he knew the observations made on arrival at Freeport were wrong, because his calculations showed that they must be wrong.

The ethical niceties which make a distinction here are not perceptible. There is, however, one fact which undermines Appellant's contention. Whatever led him to enter into the Official Log Book draft entries which *prima facie* showed overloading, as he and his counsel admitted, it was not because he felt compelled to do so be erroneous entries made in the deck log, which he was forced to copy.

The readings in the deck log for draft on sailing from Freeport were 81' 00" forward, and 30' 06" aft. This gave a mean, in the deck log of 30' 09".

Obviously, Appellant was not constrained to record in his Official Log Book what he found entered in his deck log book because he did not do so. He lowered his mean draft in the Official Log Book by three inches from what was recorded in the deck log. The defense offered in the dialogue of Appellant and Counsel quoted above it without meaning.

Most significantly, it is noted that the observed mean draft as recorded in the deck log book on departure from Freeport, 30'

09", is not much different from the draft obtained by combining the third mate's observations on arrival at Freeport with the TPI submergence figures, stated above as 30' 08.5".

Appellant's protestations about errors of his mates and draft-recorders are not persuasive because Appellant's own testimony and explanations are self-contradictory.

VII

A curiosity in Appellant's claims here must be noted. The records in the deck log of ALDINA and in the Official Log Book, relative to drafts, are frequently inconsistent. Appellant asserts that the Examiner has "selectively" chosen from among contradictory figures and : "That there is not one shred of evidence or testimony affording any basis for a selective choice which the Hearing Examiner seized upon. Any one figure appearing in the exhibits introduces [voyage records of the vessel maintained by Appellant] is just as reliable - and unreliable - as any other figure."

Appellant's argument here must be rejected. The "Load Line Act of 1929" requires a master to keep certain records. Appellant is saying here, in effect, that since he has not complied with the law as to these records, there is no reliable record which may be a predicate for findings against him. Since every record is of doubtful reliability, says Appellant, no record is usable against him; hence there is no evidence from which findings can be derived.

I hold here specifically to the contrary. Every voyage record maintained by a master, by custom or law, is usable in evidence against him and when contradictions appear the more prejudicial entries may be "selectively" used. If the rule were otherwise there would be an open invitation to masters to falsify all draft entries, to make them contradictory, and thus to render them valueless in determining whether an unlawful submergence had occurred. Refusal to abide by the law would become, according to Appellant's theory, complete defense to a charge of violation of the law.

VIII

Appellant's last attacks on the Examiner's findings have to do with the sailing of the vessel on an expired certificate of inspection.

The first thrust, labeled "short answer' defense", is that the regulation cited by the Examiner as prohibiting sailing on an expired certificate, 46 CFR 71.01-20, is so "ambiguous and obscure" as not to be controlling in the case. This is similar to the wording of attacks on statutes as being "void for vagueness".

The second is that a definition of "misconduct" must depend upon what a "reasonable man" would do as against a standard of conduct which must be applied in the circumstances. (Appellant argues that since a Coast Guard official, "shipping commissioner", signed on the crew for a voyage from New Orleans to Bombay, a voyage which could not be completed before the expiration of the certificate of inspection, and since two American consuls, at Bombay and Tunis, advised him that the vessel "should continue to operate", a "reasonable man" would properly do what Appellant did. Brief, p. 17).

While the Examiner quoted the language of 46 CFR 71.01-20 in his decision (D-15) it is obvious than this regulation is merely expositive under law and not a "regulation" issued to impose specific standards within limits authorized by law. The regulation paraphrases part of 46 U.S.C. 399. Starting with the sentence before the first proviso, this section, as pertinent, reads:

> "No vessel required to be inspected under the provisions of Title 52 of the Revised Statutes shall be navigated without having on board an unexpired regular certificate of such inspection on such temporary certificate: *Provided*, *however*, That any such vessel operated upon a regularly established line from a port in the United States to a port of a foreign country not contiguous to the United States whose certificate of inspection expires at sea or while said vessel is in a foreign port or a port of Hawaii may lawfully complete her voyage without the regular certificate of inspection or the temporary certificate required by this section, and no liability for penalties imposed under Title 52 of the Revised Statutes for want of such certificate until her voyage shall have been completed; *Provided*, That said voyage shall be

so completed within thirty days after the expiration of said certificate or temporary certificate. . ."

It is not understood why the Examiner quoted that regulation and not the statute, although he cited the statute at D-15.

But once it is seen that a statute is involved, two things become apparent immediately. First, the attack based on the idea of "void for vagueness" must fall. Only a United States Court may abrogate an Act of Congress. The statute may be interpreted; it may not be discarded.

Next, since a statute is involved, Appellant's "reasonable man" theory, imported from tort liability, becomes irrelevant. It is no longer a question of what standard a reasonable man would follow under a given set of circumstances. It is a question of whether the statute's command has been obeyed.

As pertinent here, the statute declares that no vessel subject to Title 52 of the Revised Statutes may be navigated without an unexpired certificate of inspection aboard. This vessel was navigated without an unexpired certificate of inspection aboard. This vessel was navigated, from 1 December 1964 to 15 March 1965 without an unexpired certificate of inspection aboard. *Prima facie*, there was a violation of the section.

The section itself however provides an exception. The exception, (again, as pertinent here) applies only to a vessel which is on "a regularly established line". It applies also only when a vessel on "a regularly established line" completes its voyage within thirty days of expiration of the certificate.

IX

For the moment, because of the organization of *A*ppellant's brief, it is necessary to back track. When speaking of the vagueness of the regulation (and this point has been disposed of by reference to the fact that a statute is involved), Appellant complains that:

"As an example, there os nothing in the evidence to show

that Captain Camenos' vessel was `upon a regularly established line'".

Brief - 15

Appellant is correct, but misconceives his position. There is absolutely no evidence that Appellant's vessel was on "a regularly established line". There is evidence, to the contrary, that the vessel and its owners were seeking "cargoes of opportunity". under the terms of the statute, Appellant's complaint is pointless. Once it was shown that he navigated his vessel without an unexpired certificate of inspection, the burden fell upon him to show that his vessel was "upon a regularly established line".

Even if he had been able so to prove, he would have had to show that he returned to the United States within thirty days of expiration of the certificate of inspection in order to gain the beneficial results of the statute. The vessel here did not return to the United States until four and one half months had elapsed from the date of expiration of its certificate.

Appellant's argument on this point has no merit.

X

Since Appellant has referred to the presence of a "shipping commissioner" aboard the vessel prior to its sailing on a voyage from which it could not return before the expiration of its certificate of inspection, as somehow condoning all later acts of Appellant, it must be pointed out that a person performing duties under the "Shipping Commissioner Act of 1872" had nothing to do with inspection of vessels under Title 52, Revised Statutes.

A crew may be signed on, and the vessel may still have to go through three or four ports before its "certificate of inspection" is issued. The "shipping commissioner" is not required to look into the qualifications of the vessel, only the documentary qualifications of the crew. Assuming that the commissioner had been aware of the expiration date of this certificate, there would be no reason for him not to know that a new certificate might even then be being prepared for delivery to the ship.

XI

The accounts of Appellant's visits to consulates at Bombay and Tunis are supported by letters from the two consuls.

The letter from Bombay (P. C. Exhibit "D") indicates that there was no record of a discussion but states that Appellant would have been advised that no extension of a certificate could be made abroad, but that "the vessel continues to operate under the expired certificate until arrival at a United States port".

The letter from Tunis indicates that the consul referred to section 524.3 of the Foreign Affairs Manual, which reads:

> "When a vessel's Certificate of Inspection, issued by the United States Coast Guard, expires before the return of the vessel to the United States, no action shall be taken by a consular officer, since the certificate of inspection cannot be extended abroad. The ship will continue to operate under the expired certificate until arrival at a United States port."

But Appellant's brief omits reference to the testimony of a witness called by himself, the Coast Guard Merchant Marine Detail Officer at Naples, Italy, of whose position as a member of the Staff of the Naples consulate I take official notice. This officer had boarded the vessel at Venice on 18 January 1965. He has made an entry in the vessel's Official Log Book on 19 January, which included this language:

> "Also called Captain's attention to fact vessel is now apparently operating in violation of U.S.C. 435 in that the Certificate of Inspection expired November 30, 1964." R-138

This witness also testified at length about his specific advice to Appellant that the vessel was operating in violation of law. R-141

Appellant urged at trial since this witness admitted that he could not "arrest" the vessel under the cited statute, although he had been apprized by Appellant that his owner's orders called for continued navigation of the vessel, there was another "condonation" by a "reasonable man".

It is immaterial here whether "arrest" of an American vessel can be made in a foreign port. Appellant was actually on notice that he was navigating in violation of law in addition to his notice by the Act of Congress itself.

XII

One last point may be noted. Appellant was charged with navigating the vessel with an expired certificate only from 31 December 1964 to 15 March 1965; whereas the certificate had expired on 30 November 1964. The Investigating Officer who drew up the charges evidently considered the thirty day period referred to in the second proviso as, not a "grace" period, but a period of "innocence". This construction is not correct.

First, it is repeated, this proviso is available only to a vessel "upon a regularly established line". As Appellant admits, there was no evidence that his vessel was on such a "lin". Thus the proviso had no application to this case at all.

Second, it must be noted that the first proviso is very carefully worded. It does not weaken the prohibition against a vessel's operating upon an expired certificate, which immediately precedes the proviso. It does not make the operation "lawful". It serves only to say that "no liability for penalties imposed by Title 52 of the Revised Statutes for want of such certificate shall be incurred until their voyage shall have been completed". Protection from "liability for penalties" is then limited to the case in which the vessel completes its voyage within thirty days of the date of expiration of the certificate.

The statute's terms, then, do not provide for a period of "innocence" for thirty days. They say only to a vessel to which the first proviso applies, in effect. "Your unlawful navigation on an expired certificate will not be subject to a penalty imposed under Title 52, Revised Statutes." (There is no need here to discuss the distinctions among "penalties", "penal actions", and suspension of licenses.) The point is that even if a vessel comes within the first and second provisos of 46 U.S.C. 399, and does not return within the thirty day grace period allowed, it has been navigated unlawfully for the entire period from the date the

certificate expired.

A *fortiorii*, since the provisos never did apply to ALDINA, Appellant was navigating the vessel in violation of law from 1 December 1964 not from 31 December 1964, and should so be charged.

XIII

Appellant last contended that the Examiner's order was too severe. (Appellant used the word "penalty" which I consider inappropriate). I do not think it is. I cannot close my eyes to an obvious fact. Appellant's vessel was bound from New Orleans, Louisiana, to Bombay, eastward, at a time when the Suez Canal was open. His testimony indicates, and his voyage records show, that the only purpose of his call at Freeport, Bahamas, was to take on fuel and water.

When a vessel is bound around the world, or half way round the world, it is understandable that its adjustments of cargo loading and fuel carriage should be calculated to carry maximum amount of cargo, with reasonable stops for bunkering enroute.

It has not been asserted here that a stop at Freeport, Bahamas, within three days of departure from a U. S. port, is economically desirable because of the lower cost of fuel in Freeport. I can envision however that a vessel on a voyage to Bombay from New Orleans could conveniently fail to load enough fuel at departure, and thus carry more cargo at departure from the United States, but then stop for a day at Freeport and load to a full bunker capacity, thereby overloading the ship.

ORDER

The order of the Examiner dated at New York, New York, on 14 December 1966, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 9th day of April 1968.

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