

IN THE MATTERS OF LICENSE NO. 325879
Issued to: Samuel K. GAMACHE Z-964485

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1583

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Issued to: Samuel K. GAMACHE
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and

LICENSE NO. 336427
Issued to: Elmore F. MAXWELL
Bk-97532

These appeals have 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 1 December 1965, an Examiner of the United States Coast Guard at Portland, Maine, suspended Appellant Gamache's license for one month outright plus two months on nine months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as pilot on board the United States SS LOUISIANA BRIMSTONE under authority of the license above described, on or about 7 August 1965, Appellant Gamache operated the vessel at immoderate speed in fog, thereby contributing to a collision with SS CANTERBURY LEADER.

By order of 2 December 1965, at the same place, the Examiner suspended Appellant Maxwell's license for two months on nine months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as master aboard the LOUISIANA BRIMSTONE under authority of his license, on or about 7 August 1965, Appellant Maxwell permitted the vessel to be operated at immoderate speed in fog, thereby contributing to a collision with CANTERBURY LEADER.

At the hearing, Appellants were represented by professional counsel. Appellants entered pleas of not guilty to the charges and specifications.

The Investigating Officer introduced in evidence the testimony of both Appellants and certain Ship's records.

In defense, Appellants offered in evidence statements of other personnel employed aboard the LOUISIANA BRIMSTONE.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charges and specifications had been proved. The Examiner then served written orders on Appellants suspending their licenses as described above.

The decisions were served on 6 December 1965. Appeals were timely filed on 24 December 1965, and were perfected on 24 January

1966.

FINDINGS OF FACT

On 7 August 1965, Appellants GAMACHE and MAXWELL were serving as pilot and master respectively on board the United States LOUISIANA BRIMSTONE and acting under authority of their licenses.

LOUISIANA BRIMSTONE is a tank vessel of 13, 118 gross tons, 612 feet in length, steam driven, with a single screw.

On 7 August 1965, the vessel was bound from Bucksport, Maine, to Linden, New Jersey. At 1724 that day, when the vessel, proceeding south in West Penobscot Bay, had just passed the entrance to Rockland Harbor, fog was encountered. The master came to the bridge. He and the pilot remained there throughout. A lookout was posted forward, speed was reduced to 8.5 knots, "stand-by" was ordered, licensed engineers stood by the throttle and the telegraph and fog signals were started. Radar was in satisfactory operation.

At 1748, buoy TBI was abeam to port, one quarter mile distant, but could not be seen because of the reduced visibility. At this time nothing could be seen beyond the bow of the vessel. Two Bush Channel was entered with the vessel stemming a current of 1.5 to 2 knots. A vessel, believed correctly to be CANTERBURY LEADER, was detected by radar at a distance of about 7.5 miles, approaching the other end of Two Bush Channel.

At 1753, LOUISIANA BRIMSTONE came left from 240° to 235° for an intended starboard to starboard passing. Shortly thereafter course was changed to 230° to allow more room. Radar ranges and bearings were taken on CANTERBURY LEADER. Its speed was roughly computed to be about 8.5 knots and its relative bearing was noted to have increased to the right.

At 1812 a fog signal was first heard from CANTERBURY LEADER, then about 20° on the starboard bow, distant about 2 miles. The engine was stopped. At 1814, when the conclusion was reached that the relative bearing of CANTERBURY LEADER had increased two degrees to the right, half speed of about 8.5 was resumed. At 1816, it was noted that CANTERBURY LEADER'S bearing was not changing. The engine was again stopped. At this time visibility from the

wheelhouse was limited to half the distance to the bow.

At 1819, the radar indicated that CANTERBURY LEADER was crossing the channel. Emergency full astern was ordered and executed. A backing signal was heard from the other vessel, and LOUISIANA BRIMSTONE then signaled in kind. At 1821, LOUISIANA BRIMSTONE'S bow struck the port side of CANTERBURY LEADER and penetrated it. LOUISIANA BRIMSTONE had way on at the time of impact. CANTERBURY LEADER never could be seen from the bridge of LOUISIANA BRIMSTONE.

BASES OF APPEAL

These appeals have been taken from the order imposed by the Examiner. It is contended that the only evidence is that the vessel was at complete stop at the time of impact. The Examiner's finding was therefore not based upon any affirmative evidence and must be set aside.

APPEARANCE: Chaffee, McCall, Phillips, Burke, Toler & Hopkins,
of New Orleans, L., by Donald A. Lindquist, Esquire

OPINION

I

These cases have one unusual aspect in that, while two officers, the pilot and the master of the same vessel involved in a collision, were heard in joinder, both were called as witnesses by the Investigating Officer. This was done pursuant to a stipulation between that officer and counsel for both Appellants. The terms of the stipulation were not spread on the record. Thus, there was no agreement before the Examiner that, for example, he would consider the evidence of each party *only* against the other party and not against himself.

After the two parties testified, the Investigating Officer did not conclude his case by resting; but counsel for Appellants immediately proceeded to offer in evidence the statements of absent witnesses. This was also, apparently, pursuant to an off-the-record stipulation. These statements were marked as

exhibits continuously with those earlier offered by the Investigating Officer; no distinction was made as to the party who submitted the exhibits in evidence.

After this was done, the Investigating Officer and counsel rested simultaneously and submitted the entire record to the Examiner for decision.

Upon these appeals, then, I consider the entire record as submitted to the Examiner.

II

It has been urged as the ground for appeal that the only evidence in the record as to the movement of LOUISIANA BRIMSTONE at the time of collision was that it was dead water, or possibly even making sternway, and that no finding to the contrary could be made by the Examiner.

The first question to be resolved on appeal is whether there is sufficient evidence in the record to justify the Examiner's finding that there was forward movement of LOUISIANA BRIMSTONE at the moment of impact.

The Examiner made a specific finding that LOUISIANA BRIMSTONE had headway at the time of collision. If this were so, the *prima facie* case was established.

Despite the opinions of the Appellants, there is no vivid and compelling piece of evidence that LOUISIANA BRIMSTONE was making headway at the time of collision. In fact, this piece of evidence is cited by counsel on appeal.

The chief officer of LOUISIANA BRIMSTONE, in Exhibit 8 of the record, stated, "... At the time of the collision we appeared to be stemming the current." A vessel which is underway cannot appear to be "stemming a current" unless it is making headway through water.

It is inescapable then that if this officer's testimony is believed, LOUISIANA BRIMSTONE was making headway through the water

at the moment of impact and had been, *prima facie*, proceeding at immoderate speed in fog.

IV

One further matter may be mentioned as conclusive. The Examiner made findings, which are not disputed, that persons in the pilot-house of LOUISIANA BRIMSTONE could see only about one half the distance to the bow of the vessel and never did see the vessel with which they collided. Such conditions also, *prima facie*, show immoderate speed in fog.

V

Nothing in this record requires the Examiner to hold that the *prima facie* case of immoderate speed was rebutted.

VI

While it is not of real moment in the decision of this case, it may be noted that there were two facts found by the Examiner, based upon the testimony of Appellants, which serve as indication that radar information may not always be properly construed or utilized. It was noted that some time after 1753 Appellant observed that the vessel's bearing had moved to the right. While this raw information appears to have had no direct bearing on the collision it is not amiss to point out that the observing vessel had come left, which automatically brought the relative bearing of the other to the right. Such observations, analyzed, can create a sense of security not justified.

Further, the observation was made that the relative bearing of the other vessel increased between 1812 and 1814. This was apparently persuasive enough to encourage Appellants to resume what was already an immoderate speed. But the observed increase in bearing was of only two degrees. Two minutes later, however, no further change was observed. Needless to say, at what must have been the close range of the other vessel at 1814, a two minute change of two degrees was scarcely enough to rely on in electing to resume speed.

ORDER

The orders of the Examiner dated at Portland, Maine on 1 and 2 December 1965, are AFFIRMED.

W.J. SMITH
Admiral, Unites States Coast Guard
Commandant

Signed at Washington, D.C., this 7th day of September 1966.

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