

In the Matter of Merchant Mariner's Document No. Z-864189-D1 and
all other Seaman Documents
Issued to: HURMAN JOHNSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

998

HURMAN JOHNSON

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

By order dated 18 December 1956, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while in the service of the American SS DICK LYKES as an able seaman and acting under authority of the document above described, on or about 2 November 1955, Appellant wrongfully had in his possession a quantity of narcotics known as Indian Hemp.

At the beginning of the hearing on 20 January 1956, 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. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and specification.

The Investigating Officer made his opening statement and introduced in evidence several documentary exhibits including a certified copy of the record of Appellant's conviction in Liverpool, England, for unauthorized possession of Indian Hemp on 2 November 1955. A chemist from the U. S. Customs Laboratory in New Orleans testified that Indian Hemp is marijuana.

In defense, Appellant offered in evidence his sworn testimony and that of two other members of the crew. Neither of the latter two witnesses was with Appellant when he was arrested although one of them said he was with Appellant when he bought an overcoat on the same night. Appellant testified that the marijuana was found in the pocket of an overcoat which he had bought while ashore in Liverpool but that he had not known there was marijuana in the coat.

At the conclusion of the hearing, after an unexplained adjournment for more than eight months, the oral argument of the Investigating Officer was heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served and Appellant surrendered his document on 21 December 1956. Appeal was timely filed on 11 January 1957. No elaboration of the notice of appeal has been received.

FINDINGS OF FACT

On 2 November 1955, Appellant was in the service of the American SS DICK LYKES as an able seaman and acting under authority of his Merchant Mariner's Document No. Z-864189-D1 while the ship was in the port of Liverpool, England.

On the evening of this date, Appellant was in a barroom in Liverpool with a girl when he purchased an overcoat from a local man who offered the coat for sale in the barroom. Shortly thereafter, Appellant returned to his ship to obtain some cigarettes. As Appellant was leaving the dock area, he was searched by the guard at the gate to the dock. The guard found a small package of Indian Hemp (marijuana) in a pocket of the

overcoat which Appellant had purchased. The quantity of 17 1/2 grains of marijuana was sufficient for two cigarettes. Appellant was arrested and charged with the unauthorized possession of Indian Hemp.

On 11 November 1955, Appellant was convicted by a Liverpool City Magistrates' Court on his plea of guilty to the offense of unauthorized possession of Indian Hemp. Appellant was not represented by counsel at the trial but a representative of the American Consulate was present. Appellant was sentenced to pay a fine of 20 pounds or serve 2 months in prison. In default of payment, Appellant was imprisoned.

Appellant has no prior record with the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner failed to give sufficient probative effect to the testimony of Appellant's witnesses; the Examiner erred in relying solely on the Liverpool court record without sufficiently considering the circumstances that Appellant was convicted in a foreign country and was not represented by counsel at the trial. For these reasons and also because of the hardship to his family, Appellant respectfully prays that the order be set aside and his document returned to him.

OPINION

The testimony of Appellant's two witnesses has no direct bearing on the merits of the case because neither witness had any personal knowledge concerning the circumstances of Appellant's arrest or conviction.

On the other hand, the foreign judicial record of conviction in the Liverpool Court constitutes substantial evidence in support of the specification since such record complied with the requirements of 28 U.S.C. 1741. See *Commandant's Appeals* Nos. [773](#) and [916](#). The latter statute requires that a foreign document

be certified by the lawful custodian and authenticated under seal by a United States consular officer in such foreign country as to the certification by the custodian in order for the document to be admissible in evidence. In the instant case, the extract of the record of Appellant's conviction was certified to be a true copy over the signature of H.A.G. Langton, Clerk of the Magistrates' Court in the City of Liverpool. This was authenticated by a document, signed by the United States Consul at Liverpool with the American Consulate seal for Liverpool attached, which certified that H.A.G. Langton was the Clerk of the Magistrates' Court for the City of Liverpool and that the extract was certified by the lawful custodian of it. Hence, the certification by the alleged custodian was authenticated by a second certification as to the incumbency of the alleged custodian and the genuineness of his signature on the certification of the extract.

The record does not indicate the reason why Appellant was not represented by counsel in the English court. The record does show that the American Consulate was represented at the trial. It can be presumed that this was done in order to protect Appellant's rights as an American citizen and there is no indication by the American Consul that Appellant was not given a fair trial. A foreign judgements prima facie evidence of the truth of the matter adjudged and is conclusive unless some ground is shown for impeaching it. *Hilton v. Guyot* (1895), 159 U.S. 113. Since Appellant has submitted no persuasive reason why the facts established by the court record should not be accepted, the prima facie case against Appellant was not rebutted by Appellant's denial of guilt which was rejected by the Examiner.

The great potential hazards to the safety of life and property at sea created by narcotics offenders requires that the order removing Appellant from employment on United States merchant vessels be sustained regardless of the resulting hardship to Appellant's family. The consideration for other merchant seamen must predominate over such personal interests in these proceedings.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 18 December 1956, is AFFIRMED.

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

Dated at Washington, D. C., this 20th day of December, 195 .

***** END OF DECISION NO. 998 *****

[Top](#)