

11

IN THE PRIVY COUNCIL

No. 19 of 1970

ON APPEAL FROM
THE COURT OF APPEAL OF JAMAICA

B E T W E E N:

ARNOLD MALABRE & CO. LTD.

(Defendant)
Appellant

- and -

REGINA ATS KINGSTON PILOTAGE AUTHORITY

(Plaintiff)
Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
10 MAY 1973
25 RUSSELL SQUARE
LONDON W.C.1

CLIFFORD-TURNER & CO.,
11, Old Jewry,
London,
E.C.2R BDS

Solicitors for the Appellant

JAQUES & CO.,
2, South Square,
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Solicitors for the Respondent

IN THE PRIVY COUNCILNo. 19 of 1970

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In the
Resident
Magistrates'
Court

answer unto the said COMPLAINT according to Law.

(Sgd.) C. Levy

No. 1
Complaint
(4973/66)
29th April
1966
(continued)

TAKEN AND SWORN to before me at 42 Duke Street
in the parish of Kingston this 29th day of April one
thousand nine hundred and sixty-six.

(Sgd.) J. L. Varma,
J.P. Kingston.

No. 2
Complaint
(4974/66)
29th April
1966

No. 2
COMPLAINT (4974/66)

REGINA ATS. KINGSTON PILOTAGE AUTHORITY VS. ARNOLD
MALABRE

10

BR. PILOTAGE AUTHORITY (AMENDMENT) REGULATION -
INF: 4974/66

In the Resident Magistrate's Court For the
Parish of Kingston.

The Complaint of the Kingston Pilotage Authority
of 106 Water Lane in the parish of Kingston made
through its Secretary, Cleveland Ivanhoe Levy, who
upon oath states that ARNOLD MALABRE & CO. LTD. of 2
Orange Street, Kingston, being agents for and or
consignees of the ship or vessel, the "Koei Maru"
have notwithstanding a previous demand in writing
made on behalf of the said Authority on the 15th of
December, 1965 failed in breach of Section 35 of the
Pilotage Law, 1957 to pay to the said Authority the
sum of £27.6.10 being the fees prescribed by and
specified in Regulation 33 (3) of Part IV of the
Pilotage (Board) Regulations, 1957 as amended by
the Pilotage (Board) Amendment) Regulations, 1958 for
pilotage services rendered to the said ship or vessel
by H. Brown, a Kingston Pilot, while the said ship
or vessel was outward bound in the Optional Pilotage
area of the Port of Kingston on the 9th November, 1965,
and thereupon the said Complainant prays that the
said ARNOLD MALABRE & CO. LTD. may be summoned to
answer unto the said Complaint according to Law.

20

30

(Sgd.) C. Levy

TAKEN AND SWORN to before me at 42 Duke Street in the Parish of Kingston this 29th day of April one thousand nine hundred and sixty six.

(Sgd.) J. L. Varma

J. P. Kgn.

In the Resident Magistrates' Court

No. 2

Complaint (4974/66)

29th April 1966

(continued)

No. 3

SUMMONS

No. 3

Summons

4th May 1966

PETTY SESSIONS - FORM Y. Summons to Person Charged

JAMAICA S.S.

10 Parish of KINGSTON

To: ARNOLD MALABRE & CO.LTD.
of 2 Orange Street, Kingston
of the said parish.

20 WHEREAS Complaint hath this day been laid before the undersigned one of Her Majesty's Justices of the Peace in and for the said parish of Kingston that you the said ARNOLD MALABRE & CO. LTD. being agents for and/or consignees of the ship or vessel, the "Koei Maru" have notwithstanding a previous demand in writing made on behalf of the KINGSTON PILOTAGE AUTHORITY on the 15th of December, 1965 failed in breach of Section 35 of the Pilotage Law, 1957 to pay to the said Authority the sum of £27.6.11 being the fees prescribed by and specified in Regulation 33 (3) of Part IV of the Pilotage (Board) Regulations, 1957 as amended by the Pilotage (Board) (Amendment) Regulations, 1958 for pilotage services rendered to the said ship or vessel by H. Brown, a Kingston Pilot, while the said ship or vessel was inward bound in the Optional Pilotage area of the Port of Kingston on the 7th of November 1965 against the form of the Statute in such case made and provided and against the Peace of Our Sovereign Lady the Queen, Her Crown and Dignity.

30

These are, therefore, to require you, in Her

In the
Resident
Magistrates'
Court

No. 3

Summons

4th May 1966

(continued)

Majesty's name, to be and appear on Tuesday the 31st day of May one thousand nine hundred and sixty-six at ten o'clock in the forenoon at the Court House, at Sutton Street before such Justices of the Peace for the said parish of Kingston as may then be there, to answer to the said Complaint and to be further dealt with according to Law.

Given under my hand this 4th day of May in the year of our Lord one thousand nine hundred and sixty-six at the parish aforesaid.

10

J. L. VARMA
JUSTICE OF THE PEACE
for the Parish of Kingston.

BACKING

4973/66

In the Resident Magistrate's Court
for the Parish of Kingston
holden the 31st day of May, 1966

REGINA

ats

Kgn. Pilotage
Authority

Summons

20

against

Arnold Malabre & Co. Ltd.

No. 4

Summons

4th May 1966

No. 4

SUMMONS

PETTY SESSIONS-FORM Y. Summons to Person Charged

JAMAICA S.S.
Parish of Kingston

To: ARNOLD MALABRE & CO. LTD.
of 2 Orange Street, Kingston
of the said parish.

30

WHEREAS Complaint hath this day been laid before the undersigned, one of Her Majesty's Justices of the

Peace in and for the said parish of Kingston that you the said ARNOLD MALABRE & CO. LTD. being agents for and/or consignees of the ship or vessel, the "Koei Maru" have notwithstanding a previous demand in writing made on behalf of the KINGSTON PILOTAGE AUTHORITY on the 15th of December, 1965 failed in breach of Section 35 of the Pilotage Law, 1957 to pay to the said Authority the sum of £27.6.10 being the fees prescribed by and specified in Regulation 33 (3) of Part IV of the Pilotage ((Board) Regulations, 1957 as amended by the Pilotage (Board) (Amendment) Regulations, 1958 for pilotage services rendered to the said ship or vessel by H. Brown, a Kingston Pilot, while the said ship or vessel was outward bound in the Optional Pilotage area of the Port of Kingston on the 9th of November, 1965, against the form of the Statute in such case made and provided and against the Peace of Our Sovereign Lady the Queen, Her Crown and Dignity.

In the
Resident
Magistrates'
Court

—————
No. 4

Summons

4th May 1966

(continued)

10

20

These are, therefore, to require you, in Her Majesty's name, to be and appear on Tuesday the 31st day of May one thousand nine hundred and sixty-six at ten o'clock in the forenoon at the Court House, at Sutton Street before such Justices of the Peace for the said parish of Kingston as may then be there, to answer to the said Complaint and to be further dealt with according to Law.

30

Given under my hand this 4th day of May in the year of Our Lord one thousand nine hundred and sixty-six at the parish aforesaid.

J. L. VARMA
JUSTICE OF THE PEACE
for the parish of Kingston.

BACKING

4974/66

In the Resident Magistrate's Court
for the Parish of Kingston
31st day of May, 1966

REGINA

40

ats
Kgn. Pilotage Authority
against
Arnold Malabre & Co.Ltd.

Summons

PLAINTIFF'S EVIDENCE

In the
Resident
Magistrates'
Court

No. 5

CLEVELAND IVANHOE LEVY

Plaintiff's
Evidence

CLEVELAND IVANHOE LEVY (SWORN)

No. 5

I live at 1 South Avenue, Swallowfield, Kingston 5.

Cleveland
Ivanhoe Levy

I am Secretary of the Kingston Pilotage Authority.

21st September
1966

My duties as Secretary include detailing of Pool Pilots to take duties in port of Kingston and outports of Jamaica - this involves that ship owners or agents notifies me of the need for a pilot and where there is such a pilot known as Choice Pilot and he is a pilot who has a special arrangement with Shipping Company. The Choice Pilot get their instructions for the company with whom they are engaged. I know Harold Mortimer Brown the complainant in this case and he is one of the Choice Pilot for the ports of Kingston and of Jamaica generally. He is a choice pilot particularly for port of Kingston but if his company has a boat in the outports they will inform him.

10

20

I have responsibility for the accounts of the pilotage authority Kingston Pilotage Authority collects fees for all pilots choice and otherwise and it is part of my duty to see that the fees, etc., for any of those pilots are sent out when they are due.

I myself examine the bills and check the calculations.

As Secretary of the Authority I knew of the opinion of the Attorney General with respect to collection of fees for the pilotage of compulsory and optional areas. I understand the opinion was given in 1958 representation was made to the authority in later part of 1965 in respect to this matter. As a result of representation my authority my authority communicated with the Shipping Association. The Pilots Association made these representations and consequently the Pilot Authority started to send out bills for compulsory and optional areas showing bills and fees for both areas.

30

From 1st October, 1965, this change of bills started - Prior to 1st October, 1965, the Pilotage Authority only charged a fee in respect of one area.

The new bill now was charged for a boat coming in was for both compulsory and for optional area.

The previous practice of paying only one fee was done due to the opinion of the Attorney General as I understand it.

10 As Secretary of Pilotage Authority I received information from Mr. H.M. Brown concerning the ship KOEI MARU and I spoke with him and saw his chit. I therefore sent to Messrs. Arnold Malabre and Co.Ltd., a bill for Pilotage services for that ship.

I have a copy of the bill sent but not the original

By consent tendered Exhibit 3.

20 The KOEI MARU a ship of 10,000 tons and I prepared bill in accordance with the accepted rates. A ship of 12,000 tons would be assessed for the compulsory area as follows for 10,000 tons would be £20.18.0 and for the 2220 tons would be 23 hundred @ 2/6d per hundred making of total of £23.15.6.

For the optional area the fee is the same as compulsory area so I add another £23.15.6.

For the optional area the fee is the same as compulsory area so I add another £23.15.6, making total of £47.11.0 for the outward trip a similar amount which charged of £47.11.0.

30 Additionally a choice pilot is entitled to 15% of the fee and is £14.5.4. So £54.15.8 would be the fee. Mr.Malabre contends he should only pay half of £54.15.8.

My bill also had minimum charge of transportation complete bill was £112.17.4.

On 23rd November, 1965, Authority received for Malabre Co.Ltd., a cheque covering this account and other accounts where payment actually made company only paid half the pilotage fee plus the transportation, consequently the bill was short paid £27.6.11 for the inward trip and £27.6.10 for the outward trip.

When short payment was sent Malabre said they

In the
Resident
Magistrates'
Court

Plaintiff's
Evidence

No. 5

Cleveland
Ivanhoe Levy
Examination
21st September
1966

(continued)

In the
Resident
Magistrates'
Court

Plaintiff's
Evidence

No. 5

Cleveland
Ivanhoe Levy
Examination

21st September
1966

(continued)

should only pay one fee for inward and one fee for the outward trip - Malabre & Co., said they had lodged the difference to the shipping companies special account in the Bank of Canada pending the outcome of the matter and this outstanding account has never been paid to the pilotage authority.

26th November, 1965, Pilotage Authority had a fully constituted meeting and at that meeting a decision taken concerning this delayed payment and it was decided to take the matter to the Court and in keeping with that decision our Solicitors were contacted and the present action brought by Messrs. Dunn Cox and Orrett, Solicitors.

10

Since October, 1965, I as Secretary have been sending out bills for charges of both compulsory and optional areas.

MR. COORE CROSS-EXAMINED

Cross-
examination

Under my jurisdiction are ten choice pilots and 11 pool pilots - 21 in all - Kingston pilots -

All of them do not hold outport licences - three do not hold an outport pilot licence. I do not know right now if any pilot not with us who holds only outport licence I only concerned with Kingston Pilots. I concerned with collecting and distributing the fees.

20

The average earning of a choice pilot in Kingston is £3000 odd per year. A pool pilot would earn over £2000 per year - and this is the amount collected on the basis used since 1958 to 1965 if pilots contention in this case is correct the fees collected in 1958 and 1965 is approximately half of what they should receive, bearing in mind £3000 including coastal pilotage and detention, that is, when detailed on a ship. A Kingston Pilot earns from Coastal Pilotage between £900 and £100.

30

A Pool Pilot of Kingston for Coastal Pilotage is so seldom that the fees would be very little earnings.

The amounts earned for detention yearly is a minor amount by the choice or pool pilots.

QUESTION

40

If Pilots contention is correct then for year

1958 to 1965 these pilots are now owed £400,000

ANSWER

That is not so for figures fluctuate each year but at least it will be a quarter million pounds. If they are correct then these fees would be doubled.

In 1958 I understand rates were promulgated but have been only here in 1963 in this job.

RE-EXAMINED

10 I say earnings of pool on choice pilots and also detention would include their gross earnings, but I would have to see balance sheet before I say if they include transportation - the figures I gave is the Auditor's report of 1964.

Since 1958 to 1965 the amount of ships coming to Jamaica are about the same in number

No. 6

EVIDENCE OF ALBERT ERIC JENSEN.

ALBERT ERIC JENSEN (SWORN)

20 I live at 1 Ostend Avenue, Kingston 2.

I am a Pilot licensed by the Marine Board of Kingston and I am a Choice Pilot and I have a Masters Foreign going abroad licence for any size ship going to any part of the world - I have a licence for Canada and Jamaica and I have a Licence in Navigational aids such as Radar and Gyre Compo.

30 I see map Exhibit 2 and on it I drew certain lines in red marking the compulsory pilotage limit and in drawn in accordance with pilotage Law. Hellshire points to South Cay.

I also drew another line for small point to Flag Staff at Fort Charles in Port Royal as the optional line.

In the Resident Magistrates' Court

Plaintiff's Evidence

No. 5

Cleveland
Ivanhoe Levy

Cross-examination

21st September
1966

(continued)

Re-examination

No. 6

Albert Eric
Jensen

Examination

21st September
1966

In the
Resident
Magistrates'
Court

Plaintiff's
Evidence

No. 6

Albert Eric
Jensen

21st September
1966

Examination
(continued)

I see here another map which you say is called Exhibit 2. On it I have drawn the two lines I mentioned before.

A new line in blue runs from Plumb Point to Cow Bay Point or towards Cow Bay point if taken more easterly this line was mentioned in the old Law and covered with pilotage fees into Port of Kingston.

In a lighter blue I have drawn in Rocky Point on the Palisadoes to the eastern end of Lime Cay.

The significance of this line is an Excused Limit under old law, that is, if ship reached within that line having not been hailed by a pilot then ship paid no fee that if got a pilot of course the fee would be paid.

10

In black led pencil I have made a third line and represents the hailing distance three miles of the harbour limit as made by law for a pilot to hail a ship - this line appears in the harbours law.

I have had to make myself familiar with the new law. I have had considerable experience piloting through the areas of the Harbour for about ten years.

20

The compulsory and optional areas are about the same size. These are less navigational aids such as Beacons or buoys. In the Compulsory area there are more accidents disastrous to ships than in optional area.

In compulsory area one is in the open sea and coast line is rocky and ship pounds on the rock gets a hole, and fills with water.

With optional area the ground is soft and muddy and ships do not receive much damage and can be refloated more easily - Foreign master who had no pilot I could say in optional area with so many marks he would be confused by the aids one has to go through. A ship at night coming by a master for the first time, with lights at sea and lights in city he would have a hard time finding out the many different flashes and by the time he could decipher them the ship would be aground so I say optional area has many and plenty difficulties but the compulsory area would carry more disaster to ship.

30

40

Under New Law fees are put in a poll and

distributed Authority have expenses to pay after, that is distributed to the pilots.

What a pilot gets depends on how much in the pool and how many pilots to cut in. I would say since 1958 the pool share is about the same - I believe pilots have increased a number by one but I am not sure.

There is no increase in number of ships but the size of ships have increased but the expenses of authority have increased.

CROSS-EXAMINED

I am licensed to pilot ships into most outports and I am familiar with all of them.

Most ships for foreign ports are not over 10,000 tons but most are on an average over 5000 tons. Outports for which ships to go up to wharf is Port Morant, Port Antonio, Portland Bight, Lucea.

All other areas ships had stopped at a distance from the wharves.

Prior to the new Law coming into effect it was a custom of pilots to take a ship to the dock or wharf on anchorage destination and for this service they were paid a pilotage fee.

On outward bound ship pilot boarded ship at a dock at anchorage and take boat to the pilotage limit - this system continued up to 1965, that is what I was taught, that is, to take in a ship to its dock or anchorage as the master would request.

QUESTION

If contention of pilots in this case are correct, the effect of new law is that pilot will not have?

MR. BLAKE

Under New Law pilotage is compulsory in a particular area and optional in another area. This depends on the requests put to pilot or optional to the ship - Fined any questions for future interpretation.

In the Resident Magistrates' Court

Plaintiff's Evidence

No. 6

Albert Eric Jensen

21st September 1966

Examination (continued)

Cross-examination

10

20

30

In the
Resident
Magistrates'
Court

QUESTION

Plaintiff's
Evidence

No. 6

Albert Eric
Jensen
21st September
1966

Cross-
examination
(continued)

Training of pilot concerned with practical duties but not legal duties - I was told of pilotage law and I had to read it myself - I was expected to know pilotage law.

Under old law once pilot in charge of vessel it was his duties to carry a ship to the dock or as requested by master.

Under new law if contention of pilot correct when pilot on vessel takes ship through a compulsory area we will only take in to optional area if captain requests this to be done.

10

I say pilots must get two fees - pilots contend when ship boarded at compulsory area but on reaching optional area Captain can say stop there and we go but if he says to to new port west then we go further.

Under the old scheme pilot in a duty to take ship into Kingston and dock it without waiting on master to give instructions.

I would say new law affects Master not the Pilot.

20

Before we took in ship for one fee, now we say we should get two fees if we go right into and dock. I say new law creates a change that Master must say if we must continue through optional area.

Boats can enter from two channels south and east channel. East channel is best for larger ships and is most used generally.

Light blue shading represent shallows to be avoided and pure white means the deepest water - the numbers represent fatham and feet.

30

I see distance between compulsory and optional lines on east channel I see also the south channel one -

All distance coming by either channel is more or less the same. The fee for optional and compulsory area is the same amount.

If a ship is grounded in compulsory area it is more safer than in optional area in m opinion.

Every ship going to a dock must go through ship channel which is 800 feet wide if run aground in ship channel would cause a good deal of inconvenience and danger - navigational hazards are great but not dangerous to the ship for the mud is usually soft but the port may be inconvenienced -

QUESTION

10 For safer and uneventful pilotage through the "Ship Channel" it is highly important demand to have a pilot familiar with the port?

ANSWER

I would say yes.

The purpose of pilotage is for ship and Master of ship not familiar with port and this is world wide. To have a pilot importance is for the ship - not for the port.

20 To public of Jamaica vital to have a free passage to the port. I say safety of ship comes first not the safety of the port - some ports are open ports -

I say if ship grounded in ship channel the port of Kingston would be greatly inconvenienced. Under new law if pilots correct master must take a pilot before Port Royal but on passing optional area he does not need a pilot unless he wants to have one.

If master does not wish a pilot Port Royal he must stop ship and let off pilot whence port is the ship will have to stop.

30 If ship outward bound Master will have to pick up pilot at optional point.

At the outports which is in the open ship will have to stop to take on pilot and after going through compulsory area will have to stop to let off the pilot.

Purple markings "ship channel" are lights - docking a ship needs a good deal of skill and navigat must be accustomed to the local condition.

In the
Resident
Magistrates'
Court

Plaintiff's
Evidence

No. 6

Albert Eric
Jensen

21st September
1966

Cross-
examination

(continued)

In the
Resident
Magistrates'
Court

Plaintiff's
Evidence

No. 6

Albert Eric
Jensen

21st September
1966

Cross-
examination
(continued)

Re-
examination

If a ship is damaged while docking I say the damage is more to the dock than the ship dock being of board.

It is desirable for a master docking a ship in Kingston Harbour to have a pilot with him and I think that is most necessary to have a proper person who is a pilot.

RE-EXAMINED

Under old law pilot had taken ship to dock or anchorage.

In many parts in the world there is a special fee for docking.

In Miami you have a docking fee and an anchoring fee.

I do not know if docking fee in Barbados or Trinidad Port Morant, Port Antonio, Portland Bight, Lucea, only places in outport whereby you can dock.

As regards Bauxite Ports pilots there are Ocho Rios, Alligator Pond, Portland Bight, ships can be taken to the wharf - but in Portland Bight by a larger area - ship only goes near up -

I looked on Exhibit 1 and I saw the East Channel to get to Port Royal after passing Lime Cay one goes between Rockham Cay and Gun Cay which is only 600 feet wide.

The breeze but not the swell disturbs the sea -

In compulsory area the breeze is more than when you get into the harbour. Therefore not more difficult at Lime Cay than at Ship Channel in the day. In the night outward bound both channels are equally dangerous -

I do not consider it possible or wise to go otherwise than Rockhams Cay and it not marked by anybody. May be a boat can go through east middle ground and the shoal to the north about 200 between them but no channels is marked on the map.

Under Old Law if ship to go from dock to dock master could move it by himself.

10

20

30

Since 1958 - 1965 ships have moved from dock to dock and to the stream by the master especially the small boats.

In the Resident Magistrates' Court

ADJOURNED - 1 P.M.

Plaintiff's Evidence

RESUMED - 2.10 P.M.

No. 6

Albert Eric Jensen

Re-examination

21st September 1966

(continued)

No. 7.

HAROLD MORTIMER BROWN

No. 7

Harold Mortimer Brown

Examination

21st September 1966

HAROLD MORTIMER BROWN (SWORN)

I reside at 97 Montgomery Avenue, Kingston.

10

I am a licenced Pilot licenced by the Marine Board to pilot in Kingston and a number of the out-ports. I am a Kingston Choice Pilot. Since 1927 I hold a licence for port of Kingston. Arnold Malabre & Co. have choice of my work as a pilot.

20

I know the vessel KOEI MARU and Arnold Malabre & Co., are the agents for it. That vessel arrived in Kingston 7th November, 1965, and I piloted the vessel and I received instructions from Herbert Malabre in person I believe a Director of the Company. I got instructions about four or six hours before ship arrived.

He told me the estimated time ship was arriving and that it should be docked at Esso Refinery.

I met the ship approximately 1½ miles seaward of East Middle Ground Buoy. I met the ship south of the compulsory line on just inside the line near figures

In the
Resident
Magistrates'
Court

Plaintiff's
Evidence

No. 7

Harold
Mortimer
Brown

Examination

21st September
1966

(continued)

Cross-
examination

204. I got no instructions from the Master. We stopped at Port Royal for quarantine purposes.

I got outward bound instructions from Herbert Malabre to take charge of ship at Esso Refinery and to sail the ship accordingly. 9th November, 1965, I report at Esso Refinery the ships captain and I took it to the East Channel near a figure 10 and I marked the place "X". I got special permission from Captain to take the boat there.

As a Kingston Choice Pilot my earnings from 1958 have been £2,000 for Kingston and may be another £1,000 for the outports.

10

MR. MAHFOOD CROSS-EXAMINED

Where I stopped for guarantee I now mark "P" and that is near the figure on map 83.

I been piloting Kingston Harbour for 37 years where I stopped Pratique is the usual place to stop.

I operated for years under the Old Pilotage Law. I did similar ships under the old law and under the new law. I did so before November, 1965, and after that date 3rd March, 1958 I was paid the rates the old law called for and during the war the companies gave us a different rate.

20

If on 3rd March, 1958, I made a similar trip if boat was 500 tons the rate would be £2.10.0.

If on 3rd March, 1958, I did the same trip I would be entitled to -

MR. BLAKE

Witness does not know the law.

COURT

30

He should know his pay.

QUESTION

The law say £5.1.3 it is so if law say so. We are asking for optional and compulsory area which is double the price - f the weather varied the work

would be different.

On outward bound ship did you have any reluctance leaving ship at point X.

In the Resident Magistrates' Court

ANSWER

I had no reluctance. I leave there because Master and I could leave I had undertaken a job and I did not feel to safety of ship affected.

Plaintiff's Evidence

No. 7

I would not feel that the boat should go without a pilot.

Harold Mortimer Brown

10 If captain said I could go anytime I would feel it safe to leave it at East Middle Ground Buoy. That Captain has been here a few times. I do not know if that was his first trip.

Cross-examination
21st September 1966

I felt it safe to leave at X because he said I could leave and he is the master.

(continued)

Being an experienced and prudent pilot you would not have left if any navigation hazards. There are hazards but Captain said I could leave - Many captains have done this.

20 After Lime Cay I would not say it is easy sailing for there are other hazardous points (given names of Cay)

I do not consider the knowledge of Captain, he say I to go so I went -

I had no reason to believe Captain knew of the area - I am an experienced responsible pilot. I did not leave because there were no more hazards I thought Captain competent to carry on.

30 From I left Esso docks I would never leave till I was well outside and knew the ship would be safe.

RE-EXAMINED

Re-examination

I said 2nd March, 1958, rate for piloting vessel into Kingston above 500 tons not exceed 600 tons was £2.10.0. I see it written in the law book you have there - Shipping Association paid a higher amount -

In the
Resident
Magistrates'
Court

I see the document you have shown me and I have read it - Before New Law Shipping Association was paying a fee in excess of what is on the schedule of the law.

Plaintiff's
Evidence

This document you show me is a list of fees paid by the Shipping Association.

By consent tendered.

No. 7

I had captains permission to leave the ship at 11.

Harold
Mortimer
Brown

If weather is bad and I think it better to leave and to go into my boat I can and would ask permission to leave.

10

Re-examination
21st September
1966

On outward bound the Capitain told me I could go, I did not ask if I could leave. I do not remember really.

(continued)

DEFENDANT'S EVIDENCE

No. 8

Defendant's
Evidence

CAPTAIN WILLIERS

CAPTAIN WILLIERS (SWORN)

No. 8

I live at 7 Dillsbury Avenue, Kingston, 6.

Captain
Williers

I am now employed as Marine Manager Foreshore Development Limited. August 1958 to August 1965 I was Harbour Master of Jamaica and in that time a member of the Pilotage Authority.

20

Examination
13th October
1966

My duty as Harbour Master to keep up the Buoy and beacons to ensure the safety of the harbour. As member of Pilotage Authority I understood the enforcement of the law and disciplining of pilots.

Before becoming Harbour Master I had experience of Port of Kingston as I served in various grades abroad Canadian National steamship lines including Chief Officer in and out of Kingston Harbour and was so in 1947 - 1955 my duties brought me to Kingston Harbour approximately every two months and in that time my boat had pilots who piloted the boat in and out of Kingston Harbour.

30

I was master of various other ships coming into other ports of Jamaica.

While Harbour Master and member of Pilot Authority

question of fees come up. Briefly felt by member of Authority that proper fees not being paid and in that time the Attorney General's representatives gave opinion that the law did not grant payment of double fees - the matter arose on a few occasions and was disposed of in that way -

In the
Resident
Magistrates'
Court

Defendant's
Evidence

No. 8

Captain
Williers

Examination

13th October
1966

(continued)

10 While Harbour Master practice of inward bound ship is that pilot would board the ship in the vicinity of Plumb Point Light House and would pilot vessel into its destination.

Outward bound vessel practice is pilot to board vessel at the dock and pilot it out,

During my time as Canadian National Steamship we frequently picked up a pilot as far as Rockhams Cay when inward bound and when outward we disembarked pilot in the vicinity of Port Royal. My opinion as to why this developed is in my opinion that pilotage between Kingston and Port Royal is more difficult than pilotage between Port Royal and Plumb Point.

20 I say this is the cause of practice of taking pilot at Rockam Cay - disembarking pilot off Port Royal weather conditions would also be a faster in this practice when foreign ship plying to and from Kingston Harbour and Kingston Pilot more necessary when crossing through the ships Channel. The channel I speak of is from Currence Gate to east Horse Shoe and I mark it with an "X" with my pen. That channel is approximately half the distance between the docks and the line on map called optional limit -
30 important to have pilot as area of manouvering is very restricted and an accident would have adverse effect on the port. This channel has a lot of beacon and lights - if a light is put out it could be of serious consequence to a ship. While I Harbour Master landward to the line marked optional limit most accidents occurred, and they occurred although ship under proper Kingston Pilotage. Next point requiring a pilot in docking and undocking and I say so for an
40 accident docking or undocking could cause serious damage to the wharf.

Various things can occur in docking due to prevailing winds - familiarity with local conditions are necessary in dealing with such hazards. An accident in channel can affect the use of the port and could possible result in blocking of the passage and

In the
Resident
Magistrates'
Court

closing of the port.

QUESTION

Defendant's
Evidence

In reference to ship when a master whose daily routine involves that ship in operating on a specified course in the harbour landward of the optional limit would you expect such a master to require a pilot in some way as you have described reference to foreign ships.

No. 8

Captain
Williers

ANSWER

Examination
13th October
1966
(continued)

No. I say no for usually ship of restricted and shall and probably the master has knowledge of Harbour as much as the pilots. I know now of such a ship operating in Harbour limits and it is the "Carib Cemco" and it operates between Caribbean Cement factory at Harbour Head and the vicinity of the Rio Cobre in Hunts Bay and it carries for purposes of manufacturing cement.

10

Cross-
examination

CROSS-EXAMINED

I obtained my Masters qualification in 1955, I think and before I became Harbour Master I was engaged in seaferry at Ocho Rios and Corpus Christi in Texas, U.S.A.

20

While Harbour Master I established additional navigational aids landward of the optional limit. 1947 - 1955 say up to 1954 I would not say improvements in the aids. I have no recollection of the improvements. I say the recollection so small that it was not significant. When I became Harbour Master I say the improvement of aids become significant - width of ships channel at present is 800 feet approximately at present.

30

I knew of the dredging of the channel in the late 1940's and a few years ago it was also dredged.

Between Rockham Cay and Gun Cay and the ship Channel I say ships channel is about 100 feet wider --- Rockham Gun Cay lies in the east channel and is between optional limit and compulsory limit as is on the map.

East channel is channel most usually ship coming into port of Kingston. Area lying between optional

40

limits and compulsory limits landwards has more navigational aids - swells and winds between optional and compulsory limits were more than those landward of the optional limit. So people navigating landward of optional limit has a calmer sea than on the seaward section - less aids between optional and compulsory lines and more landward.

ADJOURNED 12.45 -

RESUMED - 2.10 P.M.

10 The breeze landward of optional line same as breeze between optional and compulsory line - not more in the night.

In day winds outside Port Royal not heavier than winds landward of the optional line. The swell not heavier outside optional line than inside to landward.

20 Jensen a very experienced pilot and I know him - he has more experience than I in piloting boats in or out of Kingston than I - he say breeze in day time are heavier seaward of Port Royal than landward of Port Royal I would not agree with him.

30 I believe swell outside of Port Royal is caused by winds coming from a long distance miles away but landward the wind is broken by Port Royal - wind has no greater strength coming over a long distance of sea. The water is broken by the Palisadoes south easterly wind landward of Port Royal varies anyhow from 15 to 25 knots and that is same as outside of Port Royal - not common place winds outside usually more than inside Kingston Harbour is different.

When with Canada line I frequently picked up pilot at Rockham Cay which is 1200 feet from Port Royal when I say in vicinity of Rockham Cay I mean within 1000 feet of it and that is between 1947 - 1955.

40 In 1947 - 1955 pilotage was not very competitive in our case, because Canadian National Steamship took on their own pilots, but I cannot recall being hailed by any pilot before getting to Rockham Cay. I do not know of pilots hailing the ships before getting to Rockham Cay. I do not know if pilots hailing the ships before reaching Rockham Cay. I

In the
Resident
Magistrates'
Court

Defendant's
Evidence

No. 8

Captain
Williers

Cross-
examination

13th October
1966

(continued)

In the
Resident
Magistrates'
Court

say, however our ship always took up pilots of our choice.

Defendant's
Evidence

Under old Law I cannot say if ship had an area when they need not take up a pilot - I not familiar with old law.

No. 8

Captain
Williers

In 1947 - 1955 I do not know if ship got to Excused limit it did not need to take up a pilot. Rockham Cay by west of limits under the old law I do not know - I do not know if under old law if ship got as far as Rockham Cay it would not have to take up a pilot - this would surprise me.

10

Cross-
examination
13th October
1966

1947 - 1955 I came to Jamaica possibly forty times. Further than 1000 feet East of Rockham Cay we have taken up a pilot - and also east of Lime Cay we have taken up a pilot near east of east middle ground we have taken up a pilot. In 1947 - 1955 more often than not we took up pilot near to Rockham Cay - that is my recollection - I was concerned where we took up a pilot because I kept the log book in those days but not have checked it since.

20

(continued)

QUESTION

If ship went aground between optional and compulsory line because of nature of ground and swell consequence to ship more serious than if occurred in the optional area?

ANSWER

Yes Sir.

East channel is channel used mostly by ships coming into Kingston.

There is a south channel I can recall there in a rule as to draft of ship using that channel. It is a general practice that any ship of certain draught using 18 to 19 feet - if it is more the ships would use Eastern Channel if between line of compulsory limit and optional limit a boat went aground it would not necessarily endanger the port of Kingston. I say it would not endanger the port.

30

If between Rockham Point and Gun Cay the boat would have to be large to be of a danger. I say going

aground between optional and compulsory line in no way could the port of Kingston be endangered. If a ship go aground between Gun Cay and Rockham Cay the port of Kingston would not be endangered through channel between there is the east channel used by most ships.

In the
Resident
Magistrates'
Court

10 I say port not endangered as you can go north of Gun Cay, but I have never gone there and as to safety of piloting ships in there. I was not feeling well when I answered question. Please ask again - as to experience of piloting ship north of Port Royal I have had no experience. I cannot say if it hazardous or not hazardous or safe or unsafe. I think I can say whether safe or not without having any experience and I say it is safe.

Defendant's
Evidence

No. 8

Captain
Williers

Cross-
examination

20 I now mark a course which I say I would take up if ship ran aground between Rockham Cay and Gun Point in order to get to Port Royal and it stops at West Middle Rock and starts at to take this course one would navigate northern side of Gun Cay and making a turn but not almost a right angle turn to middle Rock and then to Port Royal - one would not make a right angle turn around Gun Cay. Aids would be desirable but not necessary and there are none on this course I mark.

13th October
1966

(continued)

30 Certain time of day such navigation would be difficult - at night having no aids it would be extremely dangerous to navigate. If a ship went aground between option and compulsory line bearing in mind the swell and the sea salvage would be more difficult than in the landward part or optional line where swell is easier.

Larger vessel can go Rockham Cay and Gun Cay but the lower the vessel is the more dangerous it would be if a ship go between Rockham Cay and Gun Cay. The longer it took to get her off ground would be more hazardous for ships due to south course.

40 If aground in other channel it all depends how long ship is aground - I do not know if salvaging would take longer outside of optional line than landward of optional line or landward of of optional area through ships channel the sea bed is not mostly mud.

I do not know if mud is more or less in between optional area and compulsory area. I have never surveyed either area but other people have.

In the
Resident
Magistrates'
Court

I cannot recall the boat El Salvador, but the name sounds familiar.

Defendant's
Evidence

I see the point on map Beacon if a vessel went aground there it would not endanger the port. No grounds outside the optional line would endanger the port I say -

No. 8

Captain
Williers

Once safely passed optional line and the ships channel there are no more dangerous except that of actual docking the ship. 1950 - 1966 I do not know of actual figures of boats going aground in optional or compulsory area.

10

Cross-
examination
13th October
1966

The boat Texita I know of it went aground in vicinity of Gun Point and that boat was a total wreck.

(continued)

The Harpola going aground in 1961 I cannot recall. The Ulren going aground in 1964 I cannot recall boat by name - the vessel Jurango I can recall but it went aground before I was Harbour Master a little before.

Landward of Port Royal line I cannot say if it has taken less time to refloat ship than those seaward of Port Royal. Two members of Shipping Association is on the Pilotage Authority as well as two members of the Pilot Association the independent masters and Harbour Master I believe another member and a chairman appointed by the Minister.

20

While I Harbour Master question of increase of fees have arisen and majority says not called for. I never returned the opinion from the General Office some one for Ministry of Communication told me something. I cannot say if opinion given by Crown Counsel for Attorney General.

30

I say docking requires knowledge of local conditions and also having a vessel from a dock to another dock in port of Kingston and also removing of a dock out to stream.

QUESTION

As Harbour Master did you know between 1958 and 1965 Foreign ships moved from dock to dock without having a pilot?

ANSWER

This is first time I hearing of it.

In 1958 - 1965 it never crossed my mind whether boat going dock to dock used a local pilot. It never crossed my mind and no complaint ever made to me by pilots.

Canadian vessels between 1947 - 1955 my vessel had to move from dock to dock and we employed a pilot.

10 As Harbour Master ship bunkered in various areas and I do not know that ship went from dock to bunkering without a pilot.

RE-EXAMINED

When on Canadian line moving from moving from dock to dock we employed pilot. Our vessels did bunkering and we took a pilot from dock to bunkering area and pilot take us back to the dock. I understand that to be practice.

MR. BLAKE

20 I object - on point that witness covering certain year and he can speak of his ships but not foreign ship.

MR. MAHFOOD

My question where foreign ships are concerned did they use pilots -

COURT

30 You say the question has been answered before Mr. Blake objected. I do not have it written down and I did not hear it - if the answer has been given - it must be removed as I do not hold the question should be answered - any hearsay and not even an opinion as no experience of it. Said no improvements to Harbour as to guides. When I in Canadian lines I saw nothing more than painting or may be a brighter light but I saw no new things.

I increased aids on landward sides after talks with pilots and my own experience I felt they desired a great improvement.

In the Resident Magistrates' Court

Defendant's Evidence

No. 8

Captain Williers

Cross-examination
13th October
1966

(continued)

Re-examination

In the Resident Magistrates' Court

I said more aids on optional side than on seaward side. My opinion this is so because navigation is more restricted. The greater need I say was on landward side of optional line.

Defendants' Evidence

Ship channel was dredged on second occasion mainly to accommodate the oil tankers that were using the New Esso Refinery and the tankers were generally larger than that formerly used - length of ship channel much greater than channel from Rockam Cay to Gun Cay.

10

No. 8

Captain Williers

Re-examination 13th October 1966

Both width, depth and length are concerned with hazards. The c I put on map is wide and water is almost as deep so I say it is easy to navigate although I have had no experience in that course.

(continued)

Further Cross-examined by Mr. Blake with consent -

Further Cross-examination (with consent)

The Senico boat plies for Cement Company and do not need a pilot like a foreign boat.

While I a Harbour Master I knew there were certain ships sailing outside the orbit of the Law -

20

Coasting ships are amongst the classes of ships outside the operation of the law. Coasting ships goes one part of island to another.

RE-EXAMINED

ADJOURNED 3.50 P.M.

TO RESUME 14/10/66

CONTINUED 14/10/66 - 10.35 A.M.

No. 9

No. 9

Walter George Chevannes

WALTER GEORGE CHEVANNES

14th October 1966

WALTER GEORGE CHEVANNES (SWORN)

30

Examination

I live at 7 Eastwood Avenue, Kingston 10. I am now employed to Western Terminals as a Berthing Officer and been there since 1963. Formerly I was a pilot in Kingston Harbour and various outports of the

harbours in Jamaica for 48 years and six months - and I retired as a pilot in January, 1963.

I worked under the old law and the new law of 1957 the Pilotage Law.

In my later years as a pilot I was an examiner for pilots after I ceased being a pilot and I am still a pilot examiner.

10 I have had considerable experience as a pilot in Kingston Harbour and the outports for 48 - 50 years.

In my experience the practice in the Kingston Harbour as regards inward bound ships, that is, when pilots get onto and off the ships. We used to board a ship anywhere between Morant Point Lighthouse and Plumb Point light house, that is, the entrance to the eastern channel and on the south anywhere from Plumb Point to Portland Point. I speak of area from east and south to west at Portland Point.

20 There were occasions when inward bound ships were boarded further in, that is, on eastern channel in the vicinity of Portland Point Lighthouse, and on south channel in the vicinity of the Fairway Buoy, that is, the Three Fathmo Bank.

Ships coming on eastern channel I have boarded ships further in than Plumb Point as far as Port Royal, but never further in than anchorage at Port Royal. The reason for not boarding a ship further in than Port Royal is -

(1) the weather outside

30 (2) the Captain of ship preferred picking me up at Port Royal. The reason for this is ship would have stopped to get "pratique" that is, the customs -

After boarding ships from whatever point I carry ship to the Pier Anchorage or the oil berth one of them - and in doing so I took ship through an area called the ship channel.

40 In my opinion the most dangerous part from Plumb Point to the Pier would be the ships channel and I say so because it was narrow length and narrow and it had a bend in it. At nights the fishing boats

In the
Resident
Magistrates'
Court

Defendants
Evidence

No. 9

Walter George
Chevannes

Examination

14th October
1966

(continued)

In the
Resident
Magistrates'
Court

would give a lot of concern in the "ship channel"
The questions of lights coming in never gave me any
problem. If a person is not familiar with ship
channel the Kingston lights would cause a trouble
especially the Esso Lights.

Defendant's
Evidence

No. 9

In my time the ship usually bunkered in the
eastern head, that is, what is called Harbour Head,
but some used to take coal at Port Royal. Taking
coal at Port Royal stopped quite some years now.

Walter George
Chevannes

Examination

14th October
1966

(continued)

In the outward journey of ship leaving a dock the
pilot would go on board on the pier or at the
anchorage and then I took ship down harbour through
ship's channel around Port Royal point through channel
between Gun Cay and Rockam Cay and sometimes I get off
at Lime Cay or take ship to Plumb Point. 10

I have left the ship before getting to Lime Cay
and did this at Port Royal abreast the pratique
anchorage.

First reason to get off before Lime Cay is
Captain would tell me I could go and he sometimes
would say it looked too rough outside or he might say
he could take ship through eastern channel alright. 20

I know channel between Gun Cay and Rockam Cay
and compared to ship channel is less dangerous because
first it is shorter. Second because it is straight.
I have piloted ships north of Gun Cay coming in and
going out and I have done so on several occasions and
the bigger one was 35,000 tons tonnage. I never
found it particularly difficult to go north of Gun
Cay. 30

Cross-
examination

MR. BLAKE CROSS-EXAMINED

I now work with Western Terminals, Lascelles
DeMercado Ltd. are shareholders. Western Terminals
are not agents for ship calling in Jamaica.
Lascelles DeMercado are Agents for ships calling in
Jamaica. In my 48 years as a pilot Lascelles was
agents at one time for ships and also when they
were a number of pilots called company pilots and they
were Lascelles DeMercado Shipping Agents.

Prior to 1957 there were a number of pilots
called company pilots and they were gentlemen
fortunately enough to be pilots who got preference 40

from shipping agents for bringing in ships. Prior to 1957 I was one of those compulsory pilots and I got preference from United Fruit Company, Thompson Hanky, Lyons Limited, Reynolds Steamship, Lascelles DeMercado, Lascelles DeMercado's Chairman got me the job I have.

10 Before 1957, the pilots not privileged had to compete for work amongst each other and if wish to earn a fee had to go outside limits and hail the ship but all of us had to do it. At times even I had to go outside the limits to meet competitions.

On majority of occasions speaking for myself to avoid competition I had to meet boat outside the limits. If a pilot hailed the ship before me and I had to get on, I have never experienced this.

QUESTION

Has it ever happened in 48 years that after you been taken on board the ship was hailed by another pilot but never you took the boat into port.

20 ANSWER

I say the Captain would say since I was there it did not matter.

I say to avoid competition I would get advanced information of a ship coming to Jamaica and I could go beyond limit and board before other pilot hailed the ship.

30 I have been a company pilot for 10 years with United Fruit Company. Four years with Lyons. Two years Thompson Hanky and rest of time with Reynolds. For the substantial part of 48 years I have been a company pilot.

I was a Chairman once of Pilots Association and at no time as a member did I support pilots of receiving two fees one for optional area and one for compulsory area.

40 I never associated myself with the pilots claim of having two fees. I was a member of the Pilotage Authority appointed to the authority was having been taken by the pilots and I was one of the chosen. I have never reported to pilot association that I

In the
Resident
Magistrates'
Court

Defendant's
Evidence

No. 9

Walter George
Chevannes

Cross-
examination
14th October
1966

(continued)

In the
Resident
Magistrates'
Court

Defendant's
Evidence

No. 9

Walter George
Chevannes

Cross-
examination

14th October
1966

(continued)

supported they should have two fees. The Pilotage Association not that I can remember even asking me to support the idea of two fees for two pilotage areas.

At Pilotage meeting I have reported that to Secretary of Association but to the Managing Committee what had taken place at a meeting.

QUESTION

Have you ever advised Pilotage Association that they should bring about case in the matter.

ANSWER

I cannot remember that. I once reported to Managing Committee what transpired at a meeting concerning a question of two fees for Montego Bay. I read the document you show me -

and having read it I say I associated myself concerning two fees although it only arose out of a Montego Bay matter.

Having seen document I say I suggested to Secretary that Pilots Association should bring a test case for two fees for pilots.

In 1960 I was a practising pilot, but today I am not employed to a shipping company but DeMercado as a Shipping Company have shares in firm I work with.

Prior to 1957 if a ship got beyond line without being hailed I never know of ship coming in by itself.

I know the line of Excused limits and is somewhere from Rocky Point towards Lime Cay.

On Exhibit 2A I see a line marked "Y" between Lime Cay and Rocky Point.

In my 48 years I have been involved in more than one shipping accident. I have had the misfortune of putting a ship aground more than once. I see lines marked optional and compulsory pilotage limit and ships gone aground from me one went aground in that area and was called something "Tanker" and was at the south edge of Beacon Shoal.

Between line of optional limit and Kingston

10

20

30

Harbour I have never gone aground. On the map I see Gun Cay and Rockham Cay. If navigating north of Gun Cay at night there are no lights to point out the reef even though one has lights at Plumb Point it not dangerous. I have good eyesight. At night if one had navigational lights it would not be easier. If there were lights it would confuse me, but I cannot speak of other pilots. I cannot say if it would confuse any sensible pilots - if such lights there I say any light north of Lime Cay would confuse me.

10

QUESTION

I have 48 years experience and I acquainted with practice of pilots and I a examiner of persons wanting a licence would you expect a reasonable pilot to be assisted by light on northern aids of Gun Cay.

ANSWER

I can't say of other pilots. Lights assist me when I am navigating through the ships channel. On East Middle ground there is a light and it assists me when coming in through east channel.

20

There is a light on Beacon shoal and it assists me. If these lights were not there it would not disturb me as I would use other lights.

As far as I am concerned since there are other lights - the lights you mention are not necessary.

The lights on ships channel if not there would place a problem on me, as there are no other lights there to substitute for them.

30

I see map Exhibit 2A. A ship I navigating ran aground at Beacon Shoal at night and it was time and there were no lights there and the mash up occurred way back in 1915 the vessel Elsalvador is 600 to 700 feet long - if a ship that length go aground up Beacon Shoal it would endanger port of Kingston depending on position it went aground. I say depending on position it would not endanger the Port of Kingston.

40

A ship aground at Beacon Shoal could not block approach to Kingston through east channel.

In the
Resident
Magistrates'
Court

Defendant's
Evidence

No. 9

Walter George
Chevannes

Cross-
examination

14th October
1966

(continued)

In the
Resident
Magistrates'
Court

QUESTION

What do you mean when you said endangering Port of Kingston depending on position aground.

Defendant's
Evidence

ANSWER

If it went aground at Beacon Shoal with her bow at Beacon Shoal and with her stern towards Rockham Cay it would be difficult to get around her and I would depend on the size of boat and the draught if it could get aground - there are ships that would not be able to pass.

10

No. 9
Walter George
Chevannes

Cross-
examination
14th October
1966

(continued)

I know prior 1957 a ship moving from dock to dock in Kingston without a local pilot.

I know prior 1957 of ship moving from dock to anchorage in harbour without aid of a local pilot and I know of ships moving from dock in Kingston to a bunkery point without use of a local pilot.

Prior to 1957 I do not know of any ship moving from a dock to Bunkery at Port Royal.

Subsequent to 1957 I know of the above occurring without a local pilot and also that they go from dock to bunkery at Harbour Head without help of a local pilot. North of Gun Cay largest boat and navigated was 35,000 and is called Columbus before the 1938 war started I had to do this because a ship coming in to use channel between Gun Cay and Rockham Cay and I was outward bound, and it was pp.m. on a Sunday night.

20

The seas are rougher outside of Port Royal than inside sometimes, but you can have right now the roughest of seas inside the harbour.

Generally sea is rougher outside harbour than inside when I took Columbus boat North of Gun Cay the sea was calm at Gun Cay.

30

Generally speaking I cannot say wind was outside Port Royal higher than inside. I don't like the phrase -

Generally speaking winds outside stronger than inside but it is not always so -

Inside Harbour the bottom of sea floor is mud and outside it is coral and mud but I would have to get the chart to tell. I cannot tell how much coral inside less than outside without seeing the chart -

40

QUESTION

As an examiner do you have to be familiar with base of sea out and inside.

ANSWER

What do you mean by familiar.

RE-EXAMINEDQUESTION

To examine a pilot does nature of sea bed arise in some places.

10 ANSWER

It does arise in some places of Kingston Harbour to deal with it. I look at the chart and see what is there and then I ask questions.

I have said sometimes rougher inside harbour than outside such as very often due to the change in the moon.

20 When south easterly wind blows towards land blowing over Port Royal to the land Port Royal is not a high mountain to block the wind. Port Royal is a very low bit of land.

By being shoal if ship aground and stern to words Rockham Cay as ship like "United States" would have difficulty passing, and average ships coming to Kingston Harbour much smaller than the ship "United States".

In 1915 was the first year I acting as a pilot. I say it was 1915 and was wartime and consequently all the lights were doused, that is, put out.

30 In 1915 there was a light at Beacon shoal but not at the position it was in now. All Harbour lights as well as Beacon Shoal were out.

If the light at Beacon Shoal was off but light at Rockham Cay and Gun Cay were on it would be no trouble.

If light north of Gun Cay I would be confused if

In the
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Court

Defendant's
Evidence

No. 9

Walter George
Chevannes

Cross-
examination

14th October
1966

(continued)

Re-
examination

In the
Resident
Magistrates'
Court

steering north of Gun Cay.

There is now a light at south part of Gun Cay and there are lights at Plumb Point.

Defendant's
Evidence

I say light north of Gun Cay would confuse me for I use light at Plumb Point and the fall of Yallahs so the light would confuse me. I used the aids I just speak of so a light north of Gun Cay would confuse me.

No. 9

Walter George
Chavannes
Re-examination

In 48 years I do not know of a ship going beyond the excused limits without a pilot and I say so because a ship generally get a pilot before reaching there.

10

14th October
1966

A compulsory pilots to Choice pilots are persons agents design because of their skill.

(continued)

This is a letter or copy of a letter Mr. Blake showed to me and I read. Tendered by the Defence Exhibit 5.

No.10

No.10

Judgment of
His Honour
Mr. H. R.
Campbell

JUDGMENT OF HIS HONOUR MR. H. R. CAMPBELL

JUDGMENT

14th November
1966

This case concerns a matter of the very greatest importance which will affect the pilots of this country and the Shipping Authorities and in particular the Kingston Pilotage Authority and Mr. Mortimer Brown a choice pilot of the port of Kingston and Messrs. Arnold Malabre & Co. Ltd., Shipping Agents represented in this Court by its General Manager, Herbert C. Malabre, Esquire, and the particular vessell concerned carries the name of Koei Maru.

20

The case is a claim brought by the complainants under the proper sections of the Pilotage Law Cap. 28 of 1957, claiming fees for pilotage services of a pilot of an inward bound and outbound vessell the Koei Maru into and out of the Port of Kingston.

30

Port Royal has always been a place of importance in this Island's history and it therefore probably fitting that in a case of this importance that it should again play a part in it.

The Law as to Pilotage commenced in the year 1891, 1st August, and in particular again appears in the revised Laws of Jamaica of the 1953 Edition and known as Law as the Pilotage Law Cap. 293 of 1953.

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10 Under the old system or the old law of Pilotage the Master of any vessell other than an excepted vessell inward bound for any of the ports of this country mentioned in the third and fourth schedules of this Law Cap. 295 of 1953 shall receive the first pilot for the post for which he is bound who shall within three miles of the limits of such port as defined by or under the provisions of the Harbours Law or any other Law relating to the limits of Harbour and not within the limit fixed by rules made under Section 3 of this Law for fixing a distance from the entrance of any Harbour within which it shall not be necessary for an inward bound vessell to take a pilot, offer his services as a pilot.

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20 Further in case such services of such pilot be refused such fees would nevertheless have to be paid either by the Master or Owner of the consignee of the vessell. When Outward bound the said pilot who brought in the said boat was entitled to the Pilotage of the said vessel when outward bound.

30 Section 3 of Cap. 293 deals among other things with the special rules for fixing a distance from the entrance of any Harbour, within which it shall not be necessary for an inward bound vessell to take a pilot, and here one must read the rules and regulations and Orders of 1930 and in this particular the Pilotage Rules which deals with excess limits.

40 On brief as soon as a vessell got to within certain limits of a port a pilot could hail a ship and the Master be forced to employ him although he may have in mind or even accept any other pilot of his choice and on being outward bound the said first pilot was entitled to pilot the vessell outward and receive the necessary fee. Also there is the Excused limit, which if a master bringing a vessell into Kingston Port or any other port for that matter reached the legal limit and was not hailed by any pilot and had no pilot of his own choice he could proceed in and having reached excused limit bring the vessel himself into port regardless if after that he was hailed by any pilot.

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One can well imagine what greeted the master of a vessel coming into harbour. Amongst other things an array of boats and flogs and signalling a race in progress amongst the boats of pilots racing towards a certain point from which the vessel could be hailed and one pilot having been successful in the race the master or the vessel again faced with another hurdle of facing a pilot he did not want and was most certainly not the choice pilot whom he expected, and was therefore by penalty of the law forced to accept such pilots services. If the Captain went further yet and awaited and received and accepted his choice pilot he was faced and forced with paying two pilotage fees inward and on outward bound two pilotage fees.

10

No doubt due to this the Legislature of 1957 took matters into the hands and the New Law or Law 28 of 1957 came into being.

Under the New Law all that was already referred to was completely swept away and several significant and new features brought into being.

20

Pilots instead of being free were now controlled by a Pilotage Authority of Kingston in particular and with which in this case we are concerned. A vessel could have a choice pilot and rules and regulations for that fixed accordingly. All pilots put on a roll for service at a specific time.

On a certain area a vessel is compelled to take a pilot under penalty of the law and in a completely new enactment.

There was also an area created where the master need not have a pilot or be forced to have a pilot, but this area is far apart and away from what was called the Excused limits under the old law. Of great importance in charge is the Management of pilot fees placed securely in the hands of a properly organised Kingston Pilotage Authority and to this date held in the hands of experienced persons in the Shipping Pilotage and Harbour business.

30

The Learned Counsels of this Prosecution and of the Defence have gone into great points regarding the old law and the new Law. Both are agreed consideration to be given to them what is contract is how is the Court to interpret in brief what is called the compulsory area and the optional area, and what are

40

the services of a pilot in these two areas.

The prosecution demands for the pilots a fee for these pilots in the compulsory area which the law demands also a further fee for their pilots in optional area of services are used by the master of a vessel and the same will apply for the outward voyage of the vessel.

10 The defence on the other hand in brief contends that on a proper interpretation of the law and in particular paragraph 15 (1) and (2) of the regulations as set out a proper construction and application is the chief point in the case and must be interpreted to mean only one pilotage fee from the compulsory area directly into port or dock or anchorage. The defence states that the compulsory limits of the Port of Kingston consists of the Foreshore of the port and the outer limit is the line defined the law of 1957 and therefore the compulsory area is all one between the compulsory line and the foreshore and 20 further the optional limits consists of the foreshore line and the optional line as defined in the law, therefore the optional line is the area of the foreshore and the line is set out in the law. The defence goes further and contends that Regulation 15 by itself appears quite clear. But regulation 30 paragraph 2 is where the difficulty arises for compulsory line is defined and represents the outer limit of compulsory piloting, obviously in the open seathere is no necessity for piloting. What the law 30 has to find in terms is the inner limit, so too the language used in the optional pilotage limit is the outer limit of the optional pilotage limit but it does not say where is the inner limit. On all ports the Law speaks of the outer limit but says nothing of the inner limit. And complainants are asking the Court to read in the law something that is not there. In defining the limits of a port it is only necessary to define the seaward limits as the other side speaks for itself, that is the foreshore.

40 Let us consider the evidence of witness in the case. Albert Eric Jensen a long and experienced pilot gave evidence concerning the two maps tendered in evidence in the case and set out the compulsory and optional limits. He tells of the old law and the customs of hailing a ship by a pilot and he speaks of an excused limit and these points are not contraversial between the two parties. Important

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points in his evidence is the lack of navigational aids and lights and buoys in the compulsory area compared the larger amounts in the optional area and the fact that there are more accidents in compulsory area - and they are disastrous to ships than in the optional area and the compulsory area has rocks and ships pound on the rocks and get holes and fills with water. On the other hand he states the optional area the ground is soft and muddy and sticks and go around but are more losely refleated to a master without a pilot in the optional area, with all the many marks would be confused especially at nights due to having lights at sea and the lights in the city of Kingston with all its different flashes and the old system of pilotage was to follow a Master's instructions and take a vessel and a dock of anchorage and outward bound would take ship from dock or anchorage but to the pilotage limit and that continued up to 1965. Under the New Law the pilot only takes vessel in the compulsory area if the master requests it and that is his contention if pilots goes through both areas he must get both fees. A Master can stop a vessel and get rid of the pilot at the optional area, if he says go further the pilot continues. A vessel grounded in the compulsory area is more serious than in the optional area while there is more than one channel for the compulsory area all vessels must use the ships channel which is 100 feet wide and if ship ran aground it would cause a good deal of inconvenience and danger. The docking of a ship requires a pilot. There is no difficulty in a pilot getting on ship at optional time, as that is done in open sea in the outports and in any case pilots gets off ship in open sea in compulsory area. In re-examination Mr. Jensen speaks of the words and a compulsory area and the markings in other channels such as East Middle ground and no markings of the channel on the map.

10

20

30

The evidence of Mr. Brown the pilot who piloted in and piloted out the Koei Maru and who caused the case to be brought before the Court. His actual pilotage is not challenged except that he said his fees were underpaid for the services rendered but all his evidence given has been carefully perused and considered.

40

Captain Walters gave evidence of the old custom of pilotage and what has occurred under the New Law. He considers that pilotage between Kingston and Port

Royal is more difficult than pilotage between Port Royal and Plumb Point and that is why a pilot was picked up as far as Rockham Cay when inward bound but outward bound disembarked in the vicinity of Port Royal. He considers a pilot very necessary when crossing the ships channel as area of manouvering very restricted and an accident would have adverse effect on the port. Marks and lights are very difficult and while he was Harbour Master most accidents occurred in the land mark to the line marked optional limit on the map. Although ship under proper Kingston pilotage he can give no assistance as to hailing of ship as his ships always had a choice pilot and he can give no assistance whatever as to the Old Law and what accused in the excused limit. He really gave no covering evidence as the difference in the various channels of the dangers of grounded boats nor does he know of the mud or rocks on the sea ground or bed. Nor can he tell of the many accidents in the optional area, or accidents that happened elsewhere. His cross-examination was long, but very little if anything gained when he was re-examined.

Mr. Walter Chevannes is an old and experienced pilot and a pilot examine now retired, but now working in shipping circles and he can and did speak of shipping and pilotage for 48 to 50 years.

Mr. Chevannes states on his opinion the most dangerous point from Plumb Point to the pier would be the ships channel as it was narrow and had a bend in it at nights. Fishing boats were quite a concern but the question of lights never gave him any problem, but if a person not familiar with "ships channel" the Kingston lights would cause a trouble especially the Esso Lights. He considers that channel between Gun Cay and Rockham Cay is less dangerous because it is shorter and because it is straight.

Before 1957 as a pilot he avoided competition from other pilots for as being a company or choice pilot he would go far out to sea to meet his vessel. According to Mr. Chevannes if a pilot got on board before him the Captain would say it did not matter. As being Chairman of pilotage association once but at no time did he ever support the pilots claim for two fees, but it is to be noted that this was later proved difficult. While an excused limit did exist

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he never knew of any ship coming into harbour without a pilot. The witness speak of the line of the optional limit and Kingston Harbour in which he has never gone aground. As far as north of Gun Cay is concerned there are no lights to point out the reefs and even though there are lights at Plumb Point it is not dangerous. He considers he has good eyesight and if one had navigational lights it would not be easier. He can only speak for himself as regards light - lights would confuse him but he cannot speak for other pilots. It appears that sometimes lights assist him, sometimes not. He given the impression of speaking only for himself and a man who piloted through his own channels and has a way of substituting his own private marks and lights. 10

The witness knows that subsequent to 1957, ships moved from dock to dock without a pilot and that ships go from dock to building at Harbour Head without a pilot.

He agreeing that generally sea is rougher outside the harbour than inside. Generally speaking words outside Port Royal stronger than inside but not always so. Inside the harbour the bottom of sea is mud and coral and outside is coral and mud, but to assist anyone with further information he would have to refer to a chart. 20

The Court has considered the evidence of all witnesses whether mentioned or not and has tried to point out points which are of great importance even though it is impossible and really very unnecessary to mention everything given in evidence. The Court is thankful for Learned Counsels opening address and their very learned address to the Court which contained much in law and very much in referring to sections of the Law and regulations. 30

On reading of the old law and he knew it is quite clear to the Court that vast changes arose in the New Law.

It is clear that the legislature went a far way to make pilotage more modern or up to date. A Pilot no longer receives fee. He has an authority that does it for him. A Pilot no longer has to fight for work as he is now either a choice pilot or on a pool and awaits his turn on a roster. No longer is a master to be as to which pilot he is to 40

receive as the hailing of vessels has been removed.

Under the Old Law there was the possibility of the Master having a passage free into his dock of anchorage of any pilot fee at all. While this has been removed has anything been left for the master of a vessel.

10 To this Court it is quite clear that the Legislature must have given a great deal of consideration of this law and as to how it could assist to the betterment of shippers and pilots and to the safety and convenience of the harbour and ships.

20 Great care was given to the setting out and markings in the law of what is called the compulsory limit and it is quite clear that in the compulsory area a pilot must be on a vessel as a pilot giving his services or else legal action in the form of a prosecution would be brought against the persons in control of the vessel. As has been rightly said for the prosecution the compulsory limit must be defined and be precise.

What is the reason for the Legislature creating this new area of what is called the optional limit. The word optional can mean no more or no less than someone must be given the use and benefit of this option.

Let us consider the pilotage areas as set out in Part 2 of the First Schedule of the Regulations Section 30 and look at the map in evidence (Court reads)

30 Consider also Section 15 1 & 2 of the regulations (Court reads) and while doing so let us not forget section 14 and in particular subsection 1 F also 1 J & 2.

One must also consider the Law as to payment of these fees in each area and the amount which is not in dispute. I consider these sections referred and others in the law and regulations.

40 The Court must find what is the landward limit of the compulsory line and having found it what is to be done in or with the optional limit.

This Court cannot find that the compulsory limit

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(continued)

must go to the foreshore passing over the optional line. In the outports all the optional areas are inshore of the optional line and so it must be in the port of Kingston. The Law gives power to the Board to define the limits of pilotage and the Board can make regulations for defining pilotage areas and distinguishing the part which is compulsory and the part which is optional and this has been done.

The Master is given instead of the old excused limit the right to navigate in the optional area with or without a pilot and this he can choose. A Master clearly could never be prosecuted if the limits were not defined and set apart. The law could never intend that pilots only paid an optional fee when they did some particular work like moving a ship from dock to dock and yet when a vessel coming into port pay only one fee for service over the compulsory limit and over the optional limit.

10

I can find no difficulty for a pilot boarding an inward bound vessel on the open sea, and there can be no difficulty in a pilot coming off the vessel at the commencement of the optional line. Nor can there be any difficulty therefore in a pilot getting into a boat at the end of the optional line outward bound which is the commencement of the compulsory line. I cannot find anything in the evidence given covering the dangers of the various channels which can upset the intentions of the law.

20

I have read the cases quoted by Learned Counsel for the complaint and others and they are most helpful in assisting the Court in the manner of interpreting a stated or a statute and its regulations. The case of Humber & Massey & Sons Ltd. while interesting to a point does not in my opinion assist the Court in determining a special fee for a special area.

30

In conclusion I find that a vessel inward bound must of force pay fee in compulsory limit and if services required in the optional area a second fee as prescribed by the law must be paid.

40

If a ship is outward bound and pilot services used in optional area must be paid a fee and of course in the compulsory limits he must by force pay a second fee.

There are of course special fees for special

jobs of work, but this does not concern us now in this case.

In the Resident Magistrates' Court

I therefore, find for the complaints as the defendants have not paid the necessary fees as required by the Law.

No.10

The defendants have already paid a half of the fees. They are therefore called upon to pay the balance due and owing on Information 4933/66 - £27.6.11 - on Information 4974/66 - £27. 6.10 or suffer the force of the Law.

Judgment of His Honour Mr. H. R. Campbell
14th November 1966

10

(Sgd.) H. Rowan Campbell,
Resident Magistrate,
Kingston.

(continued)

14th November, 1966.

Stay of execution for two weeks granted.

Costs to the Complainant taxed on the 11th February 1967, at the sum of £234. 0. 1.

(Sgd.) H. Campbell
Resident Magistrate
Kingston.

E. L. Miller,
Clerk Courts,
Kingston.

20

11th February 1967

Mr. Carberry - asks for costs - a Test case - R. M. Law - 179 - Section 203 deals with costs.

Summing case

20 - half the High Court rate - and the costs to be agreed or taxed in High Court -

See Section 271 - Discretionary arrest may be ordered by the Court.

30

Note Section 203 - if not concluded same day to ally further fee, that is, a refresher fee - and the High Court is £.

Mr. Judah - for Defence

I would ask matter of costs to be agreed or taxed and if not agreed upon to be agreed before the Clerk of Courts.

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6 days of case - I agree for 3/4.

I ask for a stay of execution for two weeks -

No.10

Court

We agree that is Solicitors and
Counsel fees.

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His Honour
Mr. H. R.
Campbell

ORDER

Costs to be agreed on or taxed for
solicitors and Counsels 3/4 refresher fees
for six days of trial - Taxation to be in
scale of Cap. 179 Sec. 203.

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Liberty to apply.

(continued)

(Sgd.) H. Rowan Campbell,
Resident Magistrate,
Kingston.

10

14th November, 1966.

I, Errol S. Hall, Acting Clerk Courts for the
parish of Kingston do hereby certify the foregoing
to be a true copy of the Notes of Evidence and
Judgment taken by His Honour Mr. H. Rowan Campbell,
Resident Magistrate in the case Regina ats Pilotage
Authority vs. Arnold Malabre & Co. Ltd.

(Sgd. E. S. Hall,
Clerk Courts,
Kingston.

20

No.11
NOTICE OF APPEAL
(Information 4973/66)

In the
Resident
Magistrates'
Court

In the Resident Magistrate's Court
For the Parish of Kingston,
Holden at Sutton Street.

No.11
Notice of
Appeal

Information No. 4973/66

25th November
1966

10

REGINA
Ats
KINGSTON PILOTAGE AUTHORITY
against
ARNOLD MALABRE & CO. LTD.

TAKE NOTICE that the abovenamed ARNOLD MALABRE & CO. LTD. hereby appeals from the Judgment of His Honour Mr. H. R. Campbell delivered herein on the 14th day of November 1966.

DATED the 25th day of NOVEMBER, 1966

20

JUDAH & RANDALL
.....
Solicitors for Arnold Malabre
& Co. Ltd.

To: The Clerk of the R.M. Court,
Sutton Street,
Kingston

AND

To: The abovenamed
Kingston Pilotage Authority

30

OR Its Solicitors
Messrs. Dunn, Cox & Orrett,
Duke Street,
Kingston.

FILED BY Judah & Randall of No. 11 Duke Street,
Kingston, Jamaica solicitors for the abovenamed
Arnold Malabre & Co. Ltd.

In the
Resident
Magistrates'
Court

No.12
NOTICE OF APPEAL
(Information 4974/66)

No.12
Notice of
Appeal
25th November
1966

In the Resident Magistrate's Court,
For the Parish of Kingston,
Holden at Sutton Street,
Information No: 4974/66

REGINA
Ats
KINGSTON PILOTAGE AUTHORITY
against
ARNOLD MALABRE & CO. LTD.

10

TAKE NOTICE that the abovenamed ARNOLD MALABRE & CO. LTD. hereby appeals from the Judgment of His Honour Mr. H. R. Campbell delivered herein on the 14th day of November 1966.

DATED the 25th day of NOVEMBER, 1966

(Sgd.) JUDAH & RANDALL
.....
Solicitors for Arnold Malabre
& Co. Ltd.

20

To: The Clerk of the R.M.Court,
Sutton Street,
Kingston

AND

To: The abovenamed
Kingston Pilotage Authority

OR Its solicitors
Messrs. Dunn, Cox & Orrett
Duke Street,
Kingston.

30

FILED by JUDAH & RANDALL of No. 11 Duke Street,
Kingston, Jamaica solicitors for the abovenamed
Arnold Malabre & Co. Ltd.

No.13
GROUNDS OF APPEAL
(Information 4973/66)

In the
Resident
Magistrates'
Court

IN THE RESIDENT MAGISTRATE'S COURT
FOR THE PARISH OF KINGSTON
HOLDEN AT SUTTON STREET
INFORMATION NO. 4973/66

No.13
Grounds of
Appeal
25th November
1966

10 REGINA
Ats
KINGSTON PILOTAGE AUTHORITY
Against
ARNOLD MALABRE & CO. LTD.

TAKE NOTICE that the following are the
Appellant's Grounds of Appeal herein:-

1. The learned Resident Magistrate misdirected himself on the facts and the law in holding that the complainant was entitled to recover the sum claimed for pilotage services rendered to the vessel "Koei Maru" by H. Brown, a Kingston pilot, while the said vessel was inward bound on the 7th of November 1965, as Brown performed this service in discharge of his clear statutory duty arising under compulsory pilotage, and was therefore only entitled to be paid the statutory fee prescribed for such compulsory pilotage.
2. Having performed the aforesaid service in discharge of his statutory duty as a compulsory pilot, Brown was not entitled to a further fee on the hypothesis that he rendered service as an optional pilot, or on any other hypothesis.
3. The conclusion of the learned Resident Magistrate that pilot Brown was entitled to a fee for optional service, as well as a fee for service as a compulsory pilot, cannot be supported on a proper interpretation of the Pilotage Law and regulations. His conclusion is wholly unreasonable, for the reasons:
 - (i) It ascribes to the legislature an intention to depart from the historical practice of pilotage in the harbour of Kingston and the

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Grounds of
Appeal

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1966

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outports, although such an intention does not appear anywhere in the law and regulations.

- (ii) It frustrates the primary purpose of pilotage in the harbour of Kingston, namely, that the harbour facilities should be protected, and that there should be free access to the harbour for inward and outward bound vessels, as his conclusion involves a finding that:
- (a) Compulsory pilotage for inward bound foreign vessels come to an end when the vessel reaches Port Royal; 10
- (b) Compulsory pilotage for outward bound foreign vessels does not commence until the vessel reaches Port Royal.
- (iii) It attributes to the Legislature a generous and munificent intention that is unprecedented in parliamentary affairs, namely, that in passing the Pilotage Law (1957), the Legislature did not merely intend that the prior statutory fee for a particular historical service should be doubled, to bring it in line with modern requirements and practice, but that the statutory fee for this same service should be doubled twice, or in other words, quadrupled. 20
- (iv) It involves reading words into the statute for the purpose of concluding that the seaward limit of the optional area is the landward limit of the compulsory area, thereby arriving at a conclusion which is a departure from the basic objects clearly manifest in the Pilotage Law. 30
- (v) It fails to give proper weight to the fact that innumerable persons representing a variety of different commercial interests, including pilots, have conducted their affairs for a number of years, and until the present dispute leading to the filing of this information arose, on the interpretation and application of the law contended for by the Appellants in this area. 40

4. In any event, if, which is denied, the learned Resident Magistrate was entitled to read words into the statute for the purpose of arriving at the conclusion that the seaward limit of the optional area was the landward limit of the compulsory area, nevertheless, the conclusion at which he arrived is unwarranted on the facts and the law.

5. The Judgment is unreasonable and cannot be supported on the facts and the law.

10 AND the Appellant therefore prays that this Honourable Court do quash the conviction imposed by the Court below, and set aside the order for costs and that the Appellant be awarded costs here and in the Court below.

Dated the 25th day of November, 1966.

JUDAH & RANDALL
.....
APPELLANT'S SOLICITORS

20 To: The Clerk of Courts, AND To: The abovenamed
Sutton Street, KINGSTON PILOTAGE AUTHORITY
Kingston
OR: Its Solicitors
Messrs. Dunn Cox & Orrett
Duke Street, Kingston.

FILED BY Judah & Randall of No. 11 Duke Street,
Kingston solicitors for the abovenamed Arnold
Malabre & Co. Ltd.

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—————
No.13

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Court

No. 14
GROUNDS OF APPEAL
(Information 4974/66)

No.14
Grounds of
Appeal
25th November
1966

IN THE RESIDENT MAGISTRATE'S COURT
FOR THE PARISH OF KINGSTON
HOLDEN AT SUTTON STREET
INFORMATION NO. 4974/66

REGINA
ats
KINGSTON PILOTAGE AUTHORITY
against
ARNOLD MALABRE & CO. LTD.

10

TAKE NOTICE that the following are the Appellant's
Grounds of Appeal herein:-

1. The learned Resident Magistrate misdirected himself on the facts and the Law in holding that the complainant was entitled to recover the sum claimed for pilotage services rendered to the vessel "Koei Maru" by H. Brown, a Kingston pilot, while the said vessel was outward bound on the 9th of November 1965, as Brown performed this service in discharge of his clear statutory duty arising under compulsory pilotage, and was therefore only entitled to be paid the statutory fee prescribed for such compulsory pilotage. 20
2. Having performed the aforesaid service in discharge of his statutory duty as a compulsory pilot, Brown was not entitled to a further fee on the hypothesis that he rendered service as an optional pilot, or on any other hypothesis. 30
3. The conclusion of the learned Resident Magistrate that pilot Brown was entitled to a fee for optional service, as well as a fee for service as a compulsory pilot, cannot be supported on a proper interpretation of the Pilotage Law and regulations. His conclusion is wholly unreasonable, for the following reasons:
 - (i) It ascribed to the legislature an intention to depart from historical practice of pilotage in the harbour of Kingston and the 40

outports, although such an intention does not appear anywhere in the law and regulations.

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No.14

Grounds of
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1966

(continued)

10 (ii) It frustrates the primary purpose of pilotage in the harbour of Kingston, namely, that the harbour facilities should be protected, and that there should be free access to the harbour for inward and outward bound vessels, as his conclusion involves a finding that:

(a) Compulsory pilotage for inward bound foreign vessels comes to an end when the vessel reaches Port Royal;

(b) Compulsory pilotage for outward bound foreign vessels does not commence until the vessel reaches Port Royal.

20 (iii) It attributes to the Legislature a generous and munificent intention that is unprecedented in parliamentary affairs, namely, that in passing the Pilotage Law (1957), the Legislature did not merely intend that the prior statutory fee for a particular historical service should be doubled, to bring it in line with modern requirements and practice, but that the statutory fee for this same service should be doubled twice, or in other words, quadrupled.

30 (iv) It involves reading words into the statute for the purpose of concluding that the seaward limit of the optional area is the landward limit of the compulsory area, thereby arriving at a conclusion which is a departure from the basic objects clearly manifest in the Pilotage Law.

40 (v) It fails to give proper weight to the fact that innumerable persons representing a variety of different commercial interests, including Pilots, have conducted their affairs for a number of years, and until the present dispute leading to the filing of this information arose, on the interpretation and application of the law

In the
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No.14
Grounds of
Appeal
25th November
1966
(continued)

contended for by the Appellants in this case.

- 4. In any event, if, which is denied, the learned Resident Magistrate was entitled to read words into the statute for the purpose of arriving at the conclusion that the seaward limit of the optional area was the landward limit of the compulsory area, nevertheless, the conclusion at which he arrived is unwarranted on the facts and the law.
- 5. The Judgment is unreasonable and cannot be supported on the facts and the Law.

10

AND the Appellant therefore prays that this Honourable Court do quash the conviction imposed by the Court below, and set aside the order for costs and that the Appellant be awarded costs here and in the Court below.

Dated the 25th day of November, 1966.

(Sgd.) Judah & Randall
.....

Appellant's Solicitors.

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To: The Clerk of Courts,
Sutton Street,
Kingston

AND

To: The abovenamed
KINGSTON PILOTAGE AUTHORITY

OR Its Solicitors
Messrs. Dunn, Cox & Orrett
Duke Street,
Kingston.

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No. 15
JUDGMENT OF WADDINGTON, J.A.

In the Court
of Appeal
Jamaica

IN THE COURT OF APPEAL JAMAICA

R.M. CRIMINAL APPEAL NO. 55/67

BEFORE: The Hon. Mr. Justice Waddington,
 Presiding
 The Hon. Mr. Justice Shelley
 The Hon. Mr. Justice Luckhoo

No.15
Judgment of
Waddington,
J.A.

5th April
1968

Reg. ats. KINGSTON PILOTAGE AUTHORITY

vs.

ARNOLD MALABRE & CO. LTD.

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Mr. David Coore, Q.C., Mr. Richard Mahfood, Q.C. and
Mr. Bruce Judah for the Appellants

Mr. V.O. Blake, Q.C., and Mr. H.D. Carberry for the
Respondents.

January 22, 23, 24, 25, 26,
29, 30, 31, 1968 and April
5, 1968.

WADDINGTON, J.A.,

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This is an appeal from orders made by the learned Resident Magistrate for the parish of Kingston on the 14th November, 1966 whereby he ordered the appellants to pay to the respondents: (a) the sum of £27.1.4. alleged to be due as fees prescribed by and specified in regulation 33 (3) of Part IV of the Pilotage (Board) Regulations, 1957, as amended by the Pilotage (Board) (Amendment) Regulations, 1958 for pilotage services rendered to the ship or vessel "Koei Maru" by H. Brown, a Kingston pilot, while the said ship or vessel was inward bound in the optional pilotage area of the port of Kingston on the 7th of November, 1965; and, (b) the sum of £27.16.10 alleged to be due as fees prescribed by and specified in the same regulation for pilotage services rendered to the same ship by the same pilot while the ship was outward bound in the optional

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pilotage area of the port of Kingston, on the 9th of November, 1965.

The appellants did not deny that the pilot had piloted the "Koei Maru" from the vicinity of the compulsory pilotage limit into a dock in the port of Kingston on the 7th November, 1965, and that he had piloted her out from the dock to an appropriate place within the compulsory pilotage limit on the 9th November, 1965. The appellants, however, disputed their liability to pay the fees alleged to be due for the services rendered by the pilot.

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The respondents contended that the services of the pilot having been utilised in piloting the vessel in the compulsory area as well as in the optional area of the port of Kingston, the appropriate fees prescribed for pilotage services in both areas were payable by the appellants in respect of the inward and outward journeys.

The appellants on the other hand contended that only one fee, i.e. the fee prescribed for pilotage services within the compulsory limits was payable by them in respect of the inward and outward journeys. They paid these fees but refused to pay the additional fees demanded by the respondents as being due in respect of the optional area.

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The resolution of this issue depends on the correct interpretation to be placed on the relevant sections of the Pilotage Law, 1957, and the Regulations contained in the First and Second Schedules thereto.

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Prior to the enactment of the Pilotage Law, 1957, the pilotage of ships into and out of the port of Kingston and the outports of the Island was governed by the Pilotage Law, Cap. 293 of the 1953 Revised Edition of the Laws of Jamaica. Under that Law, pilotage was not regulated or controlled by any central authority. The master of an inward bound vessel (other than an excepted vessel as defined in the Law) was obliged to receive on board the first pilot for the port for which the vessel was bound who offered his services within three miles of the limits of the port, but if the vessel reached a certain distance (prescribed by rules made under the Law) from the entrance of a harbour without a pilot having offered his services, the master was

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excused from the obligation to receive a pilot and could bring in the vessel himself. If the master refused the services of a pilot offered before reaching the excused limit, he or the owner or consignee of the vessel was nevertheless obliged to pay that pilot the fee appointed by the Law for pilotage of the vessel.

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10 In the case of an outward bound vessel (other than an excepted vessel) the pilot who was entitled to pilot the vessel inward bound was entitled to the pilotage of the vessel when outward bound, provided he notified the captain or consignee thereof within a specified time, and offered his services on board within a specified time, before the time fixed for starting outwards. Before the vessel proceeded to sea, however, the master was required to hoist a signal for a pilot and to keep it hoisted for a specified time in the daytime or until the services of a pilot were earlier obtained; and the master 20 was bound, if the pilot who piloted the vessel inward did not offer his services on board within the specified time, to take the first other pilot who offered his services on board.

30 Every pilot who took charge of an inward bound vessel was obliged, under penalty of a fine, not to quit the vessel, except in cases of necessity or with the consent in writing of the master, before it arrived at the place to which it was bound or before it was safely moored or anchored. And in the case of an outward bound vessel he was obliged, under the same penalty, not to quit the vessel (without the consent of the master or of the owner or agent of the vessel) before it arrived at the place where, according to the rules, pilots were allowed to quit outward bound vessels.

40 Every pilot entitled and duly offering his services to pilot a vessel (other than an excepted vessel) into or out of a port was entitled to pilotage fees at prescribed rates based on the registered gross tonnage of the vessel. The full fees were payable for piloting a vessel into the port of Kingston from beyond the prescribed limits, but if the vessel was only piloted from beyond the prescribed limits to Port Royal, or from any point within the prescribed limits to Kingston, only one-half of the fees was payable. If the pilotage was from any point within the prescribed limits and

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Port Royal, only one-quarter of the fees was payable, whilst if the pilotage was between Kingston and Port Royal, one-half of the fees was payable.

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It will thus be seen that under the old Law, the master of a vessel could not have a pilot of his own choice to pilot his vessel except at the risk of having to pay another pilot who might become entitled to pilotage fees for the vessel. The system also encouraged unseemly rivalry between pilots seeking to be the first to offer their services to vessels.

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It was against this background that the Pilotage Law of 1957 was enacted.

The salient features of this Law are, that an Authority was established known as the Kingston Pilotage Authority to which all Kingston pilots must be employed, and which has the government and control of such pilots and their apprentices, and the superintendence of all business connected with pilotage at the port of Kingston. All outport pilots and their apprentices are placed under the government and control of the Marine Board, constituted under the Marine Board Law. All pilotage fees and other charges payable under the Law in connection with the services of Kingston pilots must be paid by the master of the ship or by the owner, agent or consignee, as the case may be, to the Authority which then pays these amounts into a fund called the "pilots pool fund", and from this fund the Authority makes disbursements to the Kingston pilots at the end of each month in accordance with the Pilotage (Authority) Regulations, 1957, set out in the Second Schedule of the Law.

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The Law also provides that a ship owner can have the services of a pilot of his own choice - known as a "Kingston choice pilot" for a period of one year, renewable annually, to work exclusively as a pilot for such shipowner.

By section 4 (1) of the Law the Marine Board was given power to make regulations generally for the better carrying out of the provisions of the Law, and in particular:

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- "(a) for defining the limits of pilotage areas, distinguishing as respects any pilotage area in part of which pilotage is compulsory

and in part of which pilotage is optional,
the part of the area in which pilotage is
compulsory;

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(j) fixing the rates of pilotage dues."

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Section 32 (1) of the Law provides as follows:-

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" Every ship (other than an excepted ship)
while navigating in a compulsory pilotage area
shall be under the pilotage of a pilot licensed
for such area."

(continued)

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Section 32 (4) provides:

" If any ship (other than an excepted ship) in
circumstances in which pilotage is compulsory
under this Law, is not under pilotage as required
by this section, the master of that ship shall
be liable, on summary conviction, to a fine not
exceeding double the amount of the pilotage dues
that could be demanded for the conduct of the
ship."

20 Section 34 provides:

" It shall not be compulsory on the master
or other person in charge of a ship to take or
employ the services of any pilot when such ship
is not navigating in a compulsory pilotage area,
and every such master or other person may
lawfully pilot and conduct his own ship within
the optional pilotage limits as defined in the
regulations made under this Law, so long as he
does so without the aid or assistance of any
person other than the ordinary crew of such
ship."

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"Compulsory pilotage area" is defined in section 2
of the Law as meaning:

"the area within the limits fixed by regulations
made under section 4 of this Law within which it
shall be compulsory for a ship to take a pilot"

"Optional pilotage area" is defined as meaning:

"the area within the limits fixed by regulations

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made under section 4 of this Law within which it shall not be compulsory for a ship to take a pilot."

Regulation 15 of the Pilotage (Board) Regulations, 1957, set out in the First Schedule to the Law, provides as follows:-

"15. (1) There shall be payable in respect of pilotage services within the compulsory limits of any port, the fees specified in Part IV of these Regulations for such services.

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(2) There shall be payable in respect of pilotage services within the optional limits of any port, the fees specified in Part IV of these Regulations in respect of such services."

I should mention here that, prior to the enactment of the Pilotage Law, 1957, the shippers had come to an agreement with the pilots to pay pilotage fees considerably in excess of the fees provided by the Pilotage Law, Cap. 293. The table of fees set out in Part IV of the Regulations provided a still further increase in the fees which the shippers and the pilots had agreed on, and on the very day when the Law was proclaimed, i.e. the 3rd March, 1958, the table of fees was amended to increase the fees still further.

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Regulation 30 provides as follows:-

" The limits of the pilotage areas in the Island are hereby defined as follows -

Port of Kingston

Compulsory pilotage limit. A line from Healthshire Point to the Southern Point of South Cay and produced in the same direction to the Meridian of 76° 44'10" W. passing through the Red Cliff at Rockfort and thence along this Meridian to the foreshore of the Palisadoes.

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Optional Pilotage limit. A line joining the Fort Charles flagstaff at Port Royal to the jetty at Small Point."

Counsel for the appellants and counsel for the respondents both agree that, although not defined by

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regulation 30, it must be inferred that the landward limit for the optional pilotage area is the foreshore. They disagree, however, as to the landward limit of the compulsory pilotage area. Counsel for the appellants contends that this limit is also the foreshore, while counsel for the respondents contends that this limit is the line of the optional pilotage limit fixed by regulation 30, i.e. the line joining the Fort Charles flagstaff at Port Royal to the jetty at Small Point.

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I think that much of the difficulty which has arisen in this case is due to confusing a "limit", which can only be a line or lines, with an "area", which is the body of water enclosed within the limits. The draftsman of regulation 30 was apparently endeavouring, so far as the port of Kingston was concerned, to define the limits of the pilotage area and to distinguish the part of that area in which pilotage was to be compulsory and the part in which pilotage was to be optional. He started out, however, by not defining an area, but by defining a line, which is stated to be the "compulsory pilotage limit". The intention was, no doubt, that this line was to be the outer or seaward limit of the compulsory pilotage area. This line connected two points on the foreshore, and as no other limit was defined, from which an area could be ascertained. If the definition rested there, it appears that the compulsory area would be the body of water enclosed within this defined limit and the foreshore, as contended by counsel for the appellants. The draftsman, however, then went on to define another line, to the landward of the first line, which is stated to be the "optional pilotage limit". Here again, the intention was, no doubt, that this line was to be the outer or seaward limit of the optional pilotage area. This line also connected two points on the foreshore, and as no other limit was defined, from which an area could be ascertained, it appears that the optional area would be the body of water enclosed within this defined limit and the foreshore. The effect of the definitions of these two limits or lines is, in my view, first of all to create a compulsory pilotage area extending from the outer line to the foreshore, and then to except or exclude therefrom, as being the optional pilotage area, the area lying between the foreshore and the inner line.

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Although somewhat inelegantly done, I think the intention is reasonably clear that the body of water lying within the limits of the outer and the inner lines was to be regarded as being the compulsory pilotage area, whilst the body of water lying within the limits of the inner line and the foreshore was to be regarded as the optional pilotage area.

Once this distinction between a "limit" and an "area" is grasped, I can find no difficulty in determining what are the appropriate fees to be paid for pilotage services in any given case.

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Paragraphs (1) and (2) of regulation 15, supra, provide that the fees specified in Part IV of the Regulations shall be payable for pilotage services within the compulsory limits and the optional limits respectively.

On reference to Part IV of the Regulations, we find this provision:-

" Pilotage Fees

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33. (1) The fees in respect of pilotage services within the compulsory pilotage limits of first class ports shall be as follows - "

and then follows the table of fees based on the registered gross tonnage of the ship. It is to be noted that the fees prescribed by this paragraph are for pilotage services not merely within the compulsory pilotage area but within the compulsory pilotage limit of the port, i.e. anywhere between the outer line and the foreshore.

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Paragraph (2) prescribes the fees payable for second class ports and unspecified ports and is not relevant to this issue.

Paragraph (3) is as follows:-

" (3) The fees payable in respect of pilotage services in optional pilotage areas shall be the same as are prescribed by paragraphs (1) and (2) above."

Here again, the difference in terminology between "limit" used in paragraph (1) and "area" used in paragraph (3) is to be noted and is, I think,

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significant in endeavouring to ascertain the intention of the legislature.

In order to determine what are the appropriate fees to be paid in any given case, one must first enquire what were the services which the pilot was engaged to perform. In the instant case, the pilot was engaged to pilot the "Koei Maru" inwards bound from the vicinity of the compulsory pilotage limit into a dock in the port of Kingston, and to pilot the same vessel outward bound from the dock to an appropriate place near to the compulsory pilotage limit. Quite clearly, therefore, the pilot was performing pilotage services within the compulsory limit of the port of Kingston from the moment he boarded the ship on its inward passage until it arrived at the dock, and from the moment it left the dock on its outward passage until he left the ship. Can there be any doubt that in this case the appropriate fees to be paid for his services are those prescribed by regulation 33(1), and that these fees would cover his services for the entire passage inward and outward?

It is true that in performing these services, i.e. pilotage services within the compulsory limit, the pilot had perforce to navigate the ship through the optional area. The respondents contend that in these circumstances, the pilot would automatically become additionally entitled to the fees prescribed by paragraph (3) the moment the ship entered the optional area. I do not agree with this contention. It is my view that whilst the ship was in the optional area, the pilot was not performing such services as would attract any fees under paragraph (3). He was still performing pilotage services within the compulsory limit for which he was engaged, and which attracted the fees prescribed by paragraph (1). In the performance of these services there was a statutory duty cast on him to pilot the ship during its entire passage into and out of the port (vide regulations 14(1)(f), (j) and 14(2), and the mere fact that in carrying out this duty the ship had necessarily to be navigated through the optional area was merely incidental to the carrying out of his duty and would not, in my view, entitle him to an additional fee under paragraph (3).

I do not think that the legislature intended to make any such radical change in the general pattern of the fees payable under the previous Pilotage Law, as contended by the respondents, and it is my view

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that the fees prescribed by paragraph (3) were only intended to be payable for such services as a pilot was engaged to perform exclusively within the optional area.

In view of the conclusions which I have reached, I find it unnecessary to review any of the cases which were cited in argument.

For these reasons, it is my opinion that the learned Resident Magistrate erred when he ordered the appellants to pay the fees claimed by the respondents, and I would allow the appeal by setting aside these orders and dismissing the informations with costs to the appellants in the court below. 10

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On 7th November, 1965, Harold Mortimer Brown, a pilot licensed by the Marine Board and a Kingston choice pilot, piloted the ship "Koei Maru" at the request of a director of the defendant company (hereinafter called the appellant) from a distance approximately 1½ miles seaward of East Middleground Buoy to the Esso Refinery dock in the port of Kingston. 20

On 9th November, 1965, he was similarly requested to pilot the ship on its outward voyage from the said dock to sea and did so.

On both these voyages the ship was navigated within the "compulsory pilotage limit" and also the "optional pilotage limit" defined by regulation 30 of the Pilotage (Board) Regulations, 1957, to be found in the First Schedule to the Pilotage Law, Law 28 of 1957, as amended by the Pilotage (Board) (Amendment) Regulations, 1958. By regulation 15 - 30

" (1) There shall be payable in respect of pilotage services within the compulsory limits of any port, the fees specified in Part IV of

these Regulations for such services.

(2) There shall be payable in respect of pilotage services within the optional limits of any port, the fees specified in Part IV of these Regulations in respect of such services."

Regulation 33(1) of Part IV states the fees payable in respect of pilotage services within the compulsory pilotage limits of first class ports; and by regulation 33(3):

10 " The fees payable in respect of pilotage services in optional pilotage areas shall be the same as are prescribed by paragraphs (1) and (2) above."

We are not concerned with paragraph (2) of regulation 33.

20 The appellant paid the fee prescribed by regulation 33(1) to the Pilotage Authority who, by section 17 of Law 28 of 1957, employs and controls all Kingston pilots, and by section 20 receives and disburses pilotage dues and fees. The Authority, acting under section 35(1) of the Law, which provides the way in which fees should be paid, made demand in writing of the appellants for an additional fee as prescribed by regulation 33(3). The appellants did not pay, so these proceedings were brought.

30 The case was tried by His Honour Mr. H. Rowan Campbell, Resident Magistrate, Kingston, who made an order for payment of the fees and costs. The appeal is from that order. The questions to be answered are:

- (1) Are the compulsory pilotage area and the optional pilotage area for the port of Kingston mutually exclusive.
- (2) If they are, would the pilot of a ship traversing both areas on an inward or an outward bound voyage be entitled to both fees prescribed by regulations 33(1) and 33(3).

40 By section 2, "pilotage area" means an area the limits of which are defined pursuant to paragraph (c) of section 3; "compulsory pilotage area" means "the area within the limits fixed by regulations made

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under section 4 ... within which it shall be compulsory for a ship to take a pilot"; "optional pilotage area" means "the area within the limits fixed by regulations made under section 4 ... within which it shall not be compulsory for a ship to take a pilot".
By section 3 -

"Subject to the provisions of this Law the Board shall -

... ..

(c) define the limits of pilotage areas....."

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By section 4 -

" (1) The Board may with the approval of the Minister make regulations generally for the better carrying out of the purposes of this Law and in particular but without prejudice to the generality of the foregoing may make regulations -

(a) defining the limits of pilotage areas, distinguishing as respects any pilotage area in part of which pilotage is compulsory and in part of which pilotage is optional, the part of the area in which pilotage is compulsory;

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... ..

(2) Until varied or revoked.....regulations contained in the First Schedule to this Law shall be in force."

Part II of the First Schedule is headed "Pilotage Areas"; regulation 30 which is the first regulation under that heading, runs as follows:

" The limits of the pilotage areas in the Island are hereby defined as follows -

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Port of Kingston

Compulsory pilotage limit. A line from Healthshire Point to the Southern Point of South Cay and produced in the same direction to the Meridian of 76° 44' 10"W. passing through the Red Cliff at Rockfort and thence along this Meridian to the foreshore of the Palisadoes.

Optional pilotage limit. A line joining the Fort Charles flagstaff at Port Royal to the jetty at Small Point."

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It appears therefore, that regulation 30 is the product of section 3(c) prescribing the Board's function to define the limits of pilotage areas and of section 4 (1)(a) providing the mechanics for carrying out of that function.

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10 By section 32(1), every ship (other than an excepted ship) while navigating in a compulsory pilotage area shall be under the pilotage of a pilot licensed for such area. Section 32(4) makes liable to conviction and penalty the master of a ship (other than an excepted ship) which in circumstances in which pilotage is compulsory is not under pilotage as required. The "Koei Maru" was not an excepted ship. Section 34 provides that it shall not be compulsory on the master or other person in charge of a ship to take or employ the services of any pilot when such ship is not navigating in a compulsory pilotage area.

20 Counsel for the appellant contends that limits fixed by regulation 30 are fixed in relation to ports; therefore, the natural, or at any rate a possible, meaning of the provision is that the whole of the area of the port within the compulsory limit, i.e. from limit to foreshore, is a compulsory area and the whole of the area of the port within the optional limit, i.e. again from limit to foreshore, is the optional area. He cites Chamberlain v. I.R.C. (1945) 2 All E.R. 355 to support the view that part may be the whole.

30 Counsel for the respondents agrees that the foreshore is the inner limit of the optional area, but contends that the inner limit of the compulsory area is the outer limit of the optional area; put another way, the compulsory area ends where the optional area begins - they are mutually exclusive. Counsel for the appellant submits that since nowhere in the Regulations is an inner compulsory limit fixed, that contention reads words into the regulation which would defeat the paramount object of the legislation, and would be in breach of the rule of construction that omissions are not to be lightly inferred. Counsel for the appellant says regulation 15 is concerned with fixing fees for pilotage services and in order to determine what these services are the court must look at the duties imposed upon pilots; that when the matter is approached in this way, it will be seen that a pilot piloting a ship into or out

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of a port will either be performing compulsory service or optional service for the particular voyage in question and can only be entitled to one fee; that in the case of an inward bound ship once compulsory pilotage service begins, it continues as one service until the ship docks; that in the case of an outward bound ship once the ship is engaged on a voyage in respect of which compulsory service is required, then that service must begin when the ship begins to unmoor at its anchorage.

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In support of his contention for the construction of regulations 30 and 15, counsel for the appellant relies upon the history of the law and the practice of pilotage from 1891 to 1965, and substantially upon regulations 14(1)(f), 14(1)(j) and 14(2).

"14. (1) pilot shall -

(f) not leave a ship piloted by him unless she is berthed alongside a wharf or brought to a safe anchorage or if outward bound, until the appropriate limits have been reached:

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Provided that in the case of an outward bound ship, the pilot may, with the approval of the master, leave the ship before the appropriate limits are reached if, by reason of weather conditions his return to shore will be endangered by remaining on such ship until such limits are reached.

.. .. .

(j) when he is about to take charge of a ship which is outward bound or which is about to be moved from where she is lying, go on board and report himself to the master or officer in command before the appointed time so as to enable her to be moved out from the wharf or jetty or to proceed to sea or to her destination."

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On examining the first leg of that contention, it amounts to this: regulation 30 defines the pilotage area for the port of Kingston, makes the whole of that pilotage area a compulsory pilotage area and makes a part of that same area an optional

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pilotage area. Clearly, regulation 30 does fix the outer limit of the pilotage area by what it terms the compulsory pilotage limit, but reading the regulation in the light of the sections 3(c) and 4(1)(a), I am unable to construe it as urged by appellant's counsel.

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10 By section 3(c), it is a function of the Board to define the limits of pilotage areas, and by section 4(1)(a) in Regulations so defining a pilotage area in part of which pilotage is compulsory and in
part of which pilotage is optional, the Board must distinguish that part of the pilotage area in which pilotage is compulsory. It would seem that if the word "distinguishing" in the phrase: "distinguishing... the part of the area in which pilotage is compulsory" appearing in the section is to be given its plain, ordinary meaning, it is impossible to hold that a part of the area distinguished as one in which pilotage is compulsory includes that part from which it has been
20 distinguished, i.e. that in which pilotage is optional.

In Chamberlain v. I.R.C. (1945) 2 All E.R. 351, the court was considering section 15(2) of the English Finance Act, 1939, which runs as follows:-

"The Special Commissioners may apportion to him such part of the income of the company as appears to them to be appropriate and may adjust the apportionment of the remainder of the company's income as they may consider necessary."

30 It was argued that the power of the Special Commissioners to apportion "such part" as appears appropriate imply a fraction only, but it was held that the words should be read "such part, it may be the whole". Uthwatt, J. (as he then was), delivering the judgment of the Court of Appeal, said at page 356:-

40 " In our view, the language used does not demand the construction suggested and the topic to which the subsection is addressed excludes its acceptance. The words "such part of the income" are in our opinion capable of being read and ought to be read as 'such part, it may be the whole' of the income - in the same way as the word 'some' in formal logic means 'some, it may be all' - and the words 'the remainder' as 'the remainder if any,' and so on."

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Looking closely at section 15(2) of the Finance Act and comparing section 4(1)(a) of the Pilotage Law, I am of opinion that whereas in the former "such part" was capable of being read as "such part, it may be the whole," to read in the latter the word "part" as "part, it may be the whole" wherever it occurs, would reduce the subsection to an absurdity. To avoid that absurdity one would have to read "part" as "part, it may be the whole" only where it applies to the area where pilotage is compulsory. I can see no reason for giving the words this strained meaning in one line of the subsection, which is really one sentence, and another meaning in another line of the same subsection.

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I come now to the question of fees. Counsel for the appellant cited the case of Smith v. Veen (1955) 2 All E.R.323 as showing the general concept that one must look at the nature of the voyage on which a ship is going in order to determine whether it is navigating in a compulsory pilotage area; Smith v. Veen was concerned with whether a ship was a "home trade ship" under the English Pilotage Act, 1913, which would be exempt from compulsory pilotage; to determine that, it was held that it was necessary to look at the nature of the voyage on which the ship was engaged. However, the concept of looking at the nature of the voyage on which the ship is navigating to determine whether it is subject to compulsory pilotage is embodied in the English Act since it specifically provides that a ship shall be under pilotage if it is navigating for certain purposes in a pilotage "district" in which pilotage is compulsory. The Jamaica Pilotage Law puts no such limitation on compulsory pilotage; section 32(1) simply makes it obligatory for a ship navigating in a compulsory pilotage area to be under pilotage of a licensed pilot for the area. I do not think that Smith v. Veen is of any relevance in this case.

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The Pilotage Law, Cap. 293, which was repealed by Law 28 of 1957, contained the following sections:

" 25. Every pilot shall be liable to a fine not exceeding fifty pounds and shall also be liable to have his licence suspended in manner hereinafter provided, who, having taken charge of any inward bound vessel, shall, except in cases of necessity, without the consent in writing of the person having the command of such vessel, quit such vessel before it shall have arrived at

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the place to which it is bound, or before it shall have been safely moored or anchored, or who, having taken charge of any outward bound vessel, shall quit such vessel without the consent of the person having the command thereof, or of the owner or agent of the vessel before it shall have arrived at the place where according to the rules, pilots are allowed to quit outward bound vessels.

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10 29. It shall be the duty of every pilot having pilotage charge of any inward bound vessel to put such vessel in a berth that shall be not only safe but most convenient for the purpose for which such ship is visiting the port; ..."

20 Section 32 of Cap. 293 listed several offences by pilots; that list reappears intact in Law 28 of 1957 as section 45 with three offences added, each covering in a new form the subject matter of a section or sections of Cap. 293 which had not been re-introduced into the new Law, viz. section 45(1)(f) covering intoxication, formerly section 26 of Cap. 293; section 45(1)(h) covering refusal to take charge of inward or outward bound ships, formerly sections 23 and 24. Sections 25 and 29 do not appear in Law 28 of 1957 in the form quoted above, but we have the third addition to the list of offences - section 45(1)(k):

[If a pilot] -

30 "quits the ship, which he is piloting before the service for which he was engaged has been performed and without the consent of the master of the ship,

that pilot shall, in addition to any liability for damages, be liable in respect of each offence to a fine not exceeding one hundred pounds."

In addition, Law 28 of 1957 introduces regulations 14(1)(f) and (j) quoted above.

40 It is significant that the words in section 25 of Cap. 293: "before it shall have arrived at the place to which it is bound" have been omitted both from section 45(1)(k) of Law 28 of 1957, and from regulation 14(1)(f) thereunder, and instead in section 45(1)(k) the words used are: "before the service for

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(continued)

which he was engaged is performed", and in regulation 14(1)(f): "unless she is berthed alongside a wharf or jetty or brought to a safe anchorage"; it does not speak of a berth that is "most convenient for the purpose for which such ship is visiting the port". Section 45(1)(k) clearly implies that a pilot may quit the ship after he has rendered the services for which he is employed. Another new provision is section 19(2) -

" Applications for the service of a Kingston pool pilot shall be sent in writing to the Secretary of the Authority stating the hour required, tonnage of the ship, and the place where the pilot is required to board the ship and giving such other information as may be required by the Authority." 10

All of this change of language seems to me to be entirely in keeping with the view that services of a pilot in respect of the compulsory pilotage area and in respect of the optional pilotage area are separate services for which he is entitled to separate fees. 20

Do regulations 14(1)(f) and (j) conflict with sections 32, 34, 45(1)(k) and 19(2)? It would be extraordinary for the Law to say to the master of a ship, "You must have a pilot for the compulsory pilotage area but you need not have one for the optional pilotage area", and for the Regulations under that same Law to say to the pilot, "You shall not leave a ship piloted by you unless she is berthed or brought to a safe anchorage", if that is to be interpreted to mean that the master has no option; or for the Law to say to the master, "Name the place, e.g. Port Royal, where you want the pilot to board your ship for the outward voyage", and for the regulation to say to the pilot, "Go on board the ship at the wharf or jetty or where she is lying nearby in Kingston Harbour so as to enable her to proceed to sea." 30

I am of opinion that regulation 14, and indeed all the regulations, must be read subject to the provisions of the Law as it stands which may well result in an interpretation not quite the same as if they were read in the light of the former statute. 40

In the instant case, it is clear from the evidence that a pilot may bring a ship to a safe anchorage at the optional pilotage limit of the port of Kingston:

the evidence is that inward bound ships stop at Port Royal for pratique; conversely, I can see no reason why an outward bound ship may not be boarded by a pilot "where she is lying" off Port Royal to proceed to sea. I am, of course, unable to say what would be the position at any other port as the evidence relates to Kingston only. So far as Kingston is concerned, therefore, there seems to be no conflict between regulations 14(1)(f) and (j) and the provisions of the Law, as I interpret them; however, if and where conflict does arise, it seems to me, that the provisions of the Law must be given effect in preference to the regulations.

10

The result of what I have endeavoured to say is as follows -

- (1) The compulsory pilotage area and the optional pilotage area of the port of Kingston are mutually exclusive.
- (2) A pilot is entitled to be paid a separate fee in respect of services performed within the limits of each area by virtue of regulations 15(1), 15(2), 33(1) and 33(3), on inward and outward bound ships.

20

I would dismiss this appeal.

No.17

JUDGMENT OF LUCKHOO, J.A.

LUCKHOO, J.A.,

The question for determination is in effect whether Mr. H. M. Brown, a duly licensed pilot was rendering pilotage services within the optional pilotage limits of the port of Kingston on board the ship Koei Maru when -

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- (a) on the 7th November, 1965, that ship inward bound for the port of Kingston had crossed the optional pilotage limit for that port as defined by regulation 30 of the Pilotage (Board) Regulations, 1957;

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(b) on the 9th November, 1965, that ship outward bound from the port of Kingston had not yet crossed the aforesaid optional pilotage limit.

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(continued)

Brown had been engaged by the appellants (the ship's agents) to pilot the Koei Maru inward bound from the compulsory pilotage limit as defined by regulation 30 aforementioned to its berth in the port of Kingston, and outward bound from its berth to the aforesaid compulsory pilotage limit. The respondents, the Kingston Pilotage Authority, who, at the appellants' request, had provided the appellants with Brown's services, required the payment of pilotage fees on the basis that Brown had on each such journey performed pilotage services both within the compulsory pilotage limits and within the optional pilotage limits of the port. The appellants, however, considered that the pilotage services were rendered solely within the compulsory pilotage limits of the port, and that they were liable to pay the prescribed fees in that regard only.

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Upon complaint brought by the respondents in the Resident Magistrate's Court for the parish of Kingston, the learned Resident Magistrate held that the appellants were liable to pay the amounts claimed by the respondents. The appellants now appeal against the decision of the learned Resident Magistrate.

In order to determine the question in issue, it is necessary to consider the scope and effect of certain provisions of the Pilotage Law, 1957 (No. 28 of 1957) and of certain of the Regulations made thereunder.

30

Section 32(1) of the Pilotage Law, 1957, provides that "every ship (other than an excepted ship) while navigating in a compulsory pilotage area shall be under the pilotage of a pilot licensed for such area." The Koei Maru was not an excepted ship as defined in section 2 of the Law. "Compulsory pilotage area" is defined in section 2 of the Law as meaning "the area within the limits fixed by regulations made under section 4 of this Law within which it shall be compulsory for a ship to take a pilot." Section 4(1)(a) provides that the Marine Board may with the approval of the appropriate Minister of Government make regulations "defining the limits of pilotage areas, distinguishing as respects any pilotage area in part

40

of which pilotage is compulsory and in part of which pilotage is optional, the part of the area in which pilotage is compulsory." Section 34 provides that "it shall not be compulsory on the master or other person in charge of a ship to take or employ the services of any pilot when such ship is not navigating in a compulsory pilotage area, and every such master or other person may lawfully pilot and conduct his own ship within the optional pilotage limits as defined in the regulations made under this Law, so long as he does so without the aid or assistance of any person other than the ordinary crew of such ship."

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"Optional pilotage area" is defined by section 2 as meaning "the area within limits fixed by regulations made under section 4 of this Law within which it shall not be compulsory for a ship to take a pilot."

Regulation 30 of the Pilotage (Board) Regulations, 1957, made under the provisions of section 4 of the Law, provides as follows:-

" 30. The limits of the pilotage areas in the Island are hereby defined as follows -

Port of Kingston

Compulsory pilotage limit. A line from Healthshire Point to the Southern Point of South Cay and produced in the same direction to the Meridian of 76° 44' 10"W. passing through the Red Cliff at Rockfort and thence along the Meridian to the foreshore of the Palisadoes.

Optional pilotage limit. A line joining the Fort Charles flagstaff at Port Royal to the jetty at Small Point."

Regulation 15 of the aforesaid Regulations provides as follows:-

" (1) There shall be payable in respect of pilotage services within the compulsory limits of any port, the fees specified in Part IV of these Regulations for such services.

(2) There shall be payable in respect of pilotage services within the optional limits of any port, the fees specified in Part IV of these

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(continued)

Regulations in respect of such services."

The limits specified by regulation 30 in respect of the port of Kingston are without doubt the seaward limits of the compulsory pilotage area and the optional pilotage area. What are the landward limits of those areas? Counsel for the appellants and counsel for the respondents both agree that though not defined by regulation 30, it is to be inferred that the landward limit of the optional pilotage area is the foreshore. They disagree, however, as to the landward limit of the compulsory pilotage area. Counsel for the appellants contends that this limit is the foreshore while counsel for the respondents contends that this limit is the optional pilotage limit to seaward. If the landward compulsory pilotage limit is the foreshore, then the fees payable for the pilotage of the Koei Maru both inward bound and outward bound would be one-half of the fees demanded by the respondents, the fee payable under paragraph (1) of regulation 15 abovementioned (in respect of services for pilotage within the compulsory limits) being equal in amount to the fee payable under paragraph (2) of that regulation (in respect of services for pilotage in the optional pilotage area, regn. 33(3), that is to say, within the optional pilotage limits).

10

20

Where a pilotage area contains both an optional pilotage area and a compulsory pilotage area, the Marine Board is required by section 4 to distinguish that part of the pilotage area in which pilotage is compulsory. Can it be said that the compulsory pilotage area in the case of the port of Kingston has been distinguished by the Board in regulation 30? If that area has been so distinguished in compliance with the requirements of section 4(1)(a) of the Law, then it seems to me that a strong case is made out in support of the respondents' contention that the area between the two limits set out in the regulation is the compulsory pilotage area.

30

Counsel for the appellants bases his argument to the contrary, in the main, on -

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(a) the Law in regard to compulsory pilotage as it existed prior to 1957;

(b) the fact that if the respondents' contention is correct the scale of pilotage fees fixed by

the Pilotage Law, 1957, would be about double that which was payable by agreement between the shippers and the pilots immediately prior to the enactment of the Pilotage Law, 1957, in the case of a ship being piloted inward bound or outward bound, as the case may be;

(c) the provisions of regulation 14(1)(f) and (j) and regulation 14(2) of the Pilotage (Board) Regulations, 1957, in relation to the conduct and duties of Outport Pilots which were made applicable to the conduct and duties of Kingston pilots by regulation 3(2) of the Pilotage (Authority) Regulations, 1957.

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(continued)

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The former Law (Cap.293 of the Revised Edition of 1953) was enacted in 1891 and was amended from time to time. Under that Law the master of an inward bound ship (other than an excepted ship as defined in the Law) was required to receive the first pilot for the port for which the ship was bound who offered his services within three miles of the limits of the port, but was excused from receiving a pilot if no pilot offered his services before a specified limit measured from the entrance of the harbour - an "excused limit" - was reached. Pilotage of ships inward bound was in fact compulsory from a three mile limit outside the harbour until the ship was brought to its berth or anchorage within the harbour save that it was not compulsory for a pilot to be taken on after the excused limit had been reached. In the case of an outward bound ship (other than one exempted from all duty of taking a pilot) the master was required to hoist a signal for a pilot and to keep it hoisted for a specified time in the daytime, or until the services of a pilot were earlier obtained. Further, the master was obliged, if the pilot who piloted the ship inward did not offer his services on board within a specified time, to take the first other pilot who offered his services on board. If no pilot offered his services within the time specified for keeping hoisted the signal, the ship could proceed outward bound without a pilot. Pilotage of an outward bound ship was therefore compulsory from its berth or anchorage until it reached the sea, save where no pilot offered his services within a specified time after a signal for a pilot had been hoisted.

Where a ship was moved from one part of a port to any other, pilotage was not compulsory, but if the

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services of a pilot was utilised for such a purpose, certain specified fees were payable. This was the only instance under the former Law where pilotage was stated to be optional.

In 1957, the existing Law was enacted. Its main provisions as to compulsory pilotage and optional pilotage have already been noted. Counsel for the appellants argues that the requirements relating to compulsory pilotage under the former Law are in effect re-enacted under the existing Law, and that the existing Law was principally enacted to give statutory effect to the administrative arrangements which were in operation by agreement between shippers and pilots immediately before the enactment of the existing Law and generally to provide more efficient pilotage services. 10

It is conceded that the existing Law is to some extent modelled on the Pilotage Act, 1913 (c.31) enacted in England. Section 4(1)(a) of the Pilotage Law, 1957, is in its terms similar to section 7(c) of the English Act except that the latter refers to "pilotage districts" whereas the former refers to "pilotage areas", and the Board of Trade in England is empowered to make orders defining "pilotage districts" whereas the Marine Board in Jamaica is empowered to make regulations defining "pilotage areas". The English counterpart to section 32(1) of the 1957 Law is section 11(1) which enacts as follows - 20

" (1) Every ship (other than an excepted ship) while navigating in a pilotage district in which pilotage is compulsory for the purpose of entering, leaving, or making use of any port in the district, and every ship carrying passengers (other than an excepted ship) while navigating for any such purpose as aforesaid in any pilotage district (whether pilotage is compulsory or not compulsory in that district) shall be either - 30

(a) under the pilotage of a licensed pilot of the district; or

(b) under the pilotage of a master or mate possessing a pilotage certificate for the district who is bona fide acting as master or mate of the ship." 40

It will be observed that in England pilotage is not

compulsory where a ship is navigating for a purpose other than one of those specified in subsection (1) of section 11 of the Pilotage Act, 1913, in a district in which pilotage is compulsory. In Jamaica, however, the provisions of subsection (1) of section 32 do not limit the requirement of compulsory pilotage to navigation in a compulsory pilotage area for any specified purpose.

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(continued)

10 It is in the context of subsection (1) of section
11 of the English Pilotage Act, 1913, that the case
of Smith v. Veen, (1955) 2 All E.R. 323 cited by
counsel for the appellants is to be understood.
Counsel urged that that case illustrates the concept
that in considering whether a ship in navigation is
sailing within compulsory pilotage limits, one must
look at the nature of the voyage on which the ship is
engaged and that once that concept is grasped there is
nothing contradictory in the seaward optional pilotage
limit being within the compulsory pilotage area. In
20 Smith v. Veen (ubi sup.) the question was whether a
ship, the M.V. Adara was "a home trade ship" within
the meaning of that term in section 11(4) of the
Pilotage Act, 1913, so as to be an "excepted ship"
by virtue of being exempt pursuant to the provisions
of section 11(3)(f) of that Act from compulsory
pilotage, when she sailed from a port in the United
Kingdom on a voyage to Oslo going first to a port in
Holland which was within the home trade limits. It
was held by the Divisional Court that the ship, even
30 though regularly engaged in trading within the home
trade limits going on a voyage to a port outside those
limits on that voyage, ceased to be excepted as a
"home trade ship" within the provisions of s.11(4)
of the Act and was required to carry a pilot. It was
not in dispute that the ship was navigating in a
compulsory pilotage district for the purpose of
leaving port in that district. It appears to me
that the words "navigating in a pilotage district in
which pilotage is compulsory" (s.11(1) of the
40 Pilotage Act, 1913) and "navigating in a compulsory
pilotage area" (s.32(1) of the Pilotage Law, 1957)
mean no more than the ship being within a body of
water between two fixed limits and that the concept
of the nature or purpose of a ship's voyage has no
relevance to the determination of the meaning of
those words.

Section 32(2) of the Pilotage Law, 1957, provides
as follows:-

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Jamaica

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(continued)

" (2) A ship while being moved within a harbour which forms part of a pilotage area shall be deemed to be a ship navigating in a pilotage area, except so far as may be provided by regulation in the case of ships being so moved for the purpose of changing from one mooring to another mooring or of being taken into or out of any dock."

This provides in effect that a ship is to be deemed to be navigating in a compulsory pilotage area where it is being moved within a harbour which forms part of a compulsory pilotage area, except so far as may be provided by regulation in the case of ships being so moved for the purpose of changing from one mooring to another mooring or of being taken into or out of any dock - circumstances under which pilotage is not compulsory. A similar provision appears at section 32 of the Pilotage Act, 1913.

10

Section 33 relates to the liability of the owner or master in care of a ship navigating under circumstances in which pilotage is compulsory.

20

Section 34 has already been noted and must clearly be read with section 32 in determining the circumstances in which pilotage is compulsory under the Law.

Sections 32 and 34 seem to indicate that the compulsory pilotage area of a port is to be separate and distinct from the optional pilotage area of that port. Counsel for the appellants has urged, however, that if the compulsory pilotage area stops short of the ship's berth or anchorage within the harbour, this would give rise to a situation whereby foreign ships whose captains are unfamiliar with a port might endanger the safety of the ship or of the port, and that the avoidance of such a danger is the scheme and purpose of the Pilotage Law. The answer to this is that the Marine Board is empowered to define the limits of compulsory pilotage areas in such a way as to avoid as far as is possible the occurrence of any such apprehended danger. But sections 32 and 34 of the Law do not appear to contemplate an optional pilotage area of a port being part of a compulsory pilotage area, or vice versa.

30

40

Turning now to the question of the scale of pilotage fees prescribed under the existing Law, it must

not be overlooked that a statutory Authority - the Kingston Pilotage Authority - has been set up, and that it is provided that the working expenses of the Authority must be defrayed out of the pilotage dues collected. It will also be observed that on the appellants' contention, the amount of fees payable for pilotage services in an optional area would be the same as the amount of fees payable for pilotage services in the entire pilotage area, and would therefore be no less an anomaly than is the case where the compulsory pilotage area and the optional pilotage area are mutually exclusive. I do not think that the amounts in the scale of prescribed fees really assist in the determination of the question in issue on this case.

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(continued)

A more substantial argument in favour of the appellants is founded on the provisions of paragraphs (f) and (j) of regulation 14(1) and on the provisions of regulation 14(2) of the Pilotage (Board) Regulations, 1957. These provisions are set out hereunder:-

" 14. (1) The pilotage services at outports shall be under the general supervision of the Marine Superintendent, and an outport pilot shall -

XXX XXX XXX XXX XXX

(f) not leave a ship piloted by him unless she is berthed alongside a wharf or jetty or brought to a safe anchorage or if outward bound, until the appropriate limits have been reached:

Provided that in the case of an outward bound ship, the pilot may, with the approval of the master, leave the ship before the appropriate limits are reached if, by reason of weather conditions his return to shore will be endangered by remaining on such ship until such limits are reached.

(j) when he is about to take charge of a ship which is outward bound or which is about to be moved from where she is lying, go on board and report himself to the master or officer in command before the appointed time so as to enable her to be moved out from the wharf or jetty or to proceed to

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sea or to her destination;

xxx xxx xxx xxx xxx

No.17

(2) The duties of an outport pilot in regard to an outward bound ship shall commence as soon as such ship begins to unmoor for the purpose of proceeding to sea.

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1968

On inbound ships his duties shall commence when he boards the ship in any position within a pilotage area."

(continued)

The requirements of paragraph (f) that a pilot shall not leave a ship piloted by him unless she is berthed alongside a wharf or jetty or brought to a safe anchorage, is not limited to ships inward bound. The provision of paragraph (f) do require a pilot to remain on board until the ship is berthed or brought to a holding anchorage within the harbour. The provisions of paragraph (j) of regulation 14(1) and of regulation 14(2) do require a pilot to go on board an outward bound ship before the ship leaves her berth or anchorage in harbour and to commence his duties as soon as the ship begins to unmoor from such berth or anchorage for the purpose of proceeding to sea. However, the provisions of regulation 14 must be read subject to the provisions of sections 32 and 34 of the Law, and are applicable only insofar as they do not conflict with the provisions of those sections. 10
20

These provisions contained in the Regulations (which may be revoked or amended by the Marine Board) cannot in my view extend the obligation of compulsory pilotage which is clearly laid down in sections 32 and 34 of the Law. Whether the provisions of regulation 30 of the Pilotage (Board) Regulations, 1957, require amendment so as to provide for compulsory pilotage in ports up to berths or anchorages is a matter for the Marine Board. We have been informed that since the enactment of the existing Law in 1957, pilotage in the Island, following upon legal opinion taken, has proceeded upon the basis that it is compulsory for a ship inward bound (other than an excepted ship) to be under pilotage from the seaward compulsory pilotage limit to the ship's berth or anchorage, and for a ship outward bound to be under pilotage from the ship's berth or anchorage to the seaward compulsory limit. However this may be, I am of the opinion that the compulsory pilotage area for 30
40

the port of Kingston does not extend landward beyond the optional pilotage limit as defined in regulation 30, and that if the services of a pilot are utilised in piloting a ship inward bound or outward bound or otherwise between the optional pilotage limit as defined in regulation 30 and the foreshore, the appropriate fee prescribed by regulation 15(2) becomes payable.

10 I would answer in the affirmative to both branches of the question for determination set out above. In the result, I would dismiss the appeal.

In the Court of Appeal Jamaica

No.17

Judgment of Luckhoo, J.A.

5th April, 1968

(continued)

No. 18

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COURT OF APPEAL

R.M. Criminal Appeal No. 55 of 1967

ON APPEAL FROM THE COURT OF APPEAL

REGINA ATS. KINGSTON PILOTAGE AUTHORITY
Plaintiff/Respondent

20

Vs.

ARNOLD MALABRE & CO. LTD.
Defendant/Appellant

Before the Honourable Mr. Justice Moodie, the Honourable Mr. Justice Shelly and the Honourable Mr. Justice Edun

30

UPON THIS MOTION coming on for hearing on the 4th day of July, 1969 and UPON HEARING Counsel for Arnold Malabre & Co. Ltd. and the Kingston Pilotage Authority having been served but not having appeared and UPON READING the affidavit of Peter John Judah

No.18

Order granting final leave to appeal to Her Majesty in Council

24th July, 1969

In the Court
of Appeal
Jamaica

No.18

Order grant-
ing final
leave to
appeal to
Her Majesty
in Council

24th July,
1969

(continued)

filed on the 14th day of May, 1969

THIS COURT DOTH ORDER that final leave to appeal to Her Majesty in Council against the decision of this Honourable Court delivered on the 16th day of May, 1968 be and is hereby granted to Arnold Malabre & Co. Ltd. the conditions attaching to the Conditional Order of this Honourable Court made the 16th day of May, 1968 having been satisfied.

~~AND IT IS ORDERED that the costs of the applica-
tion and order herein be costs in the cause.~~

10

DATED this 24th day of July 1969.

(Sgd.) S.C.MORRIS

Deputy Registrar.

Filed by Messrs. Judah, Desnoes & Co. of 4 Duke Street,
Kingston, solicitors for Arnold Malabre & Co.

I, S. C. Morris Registrar of the Supreme Court of
Judicature of Jamaica do hereby declare this to be
a true copy of the original document.

EXHIBIT 3.

BILL FROM PILOTAGE AUTHORITY TO ARNOLD MALABRE

Exhibit 3

Ship's Name or M.S. "KOEI MARU" P.O. Box 610, Kingston
 Gross Tonnage 12,220 Date November 10, 1965
 Agents/Owners ARNOLD L. MALABRE & CO. LIMITED.

Bill from
 Pilotage
 Authority to
 Arnold
 Malabre

10th November
 1965

Dr. to KINGSTON PILOTAGE AUTHORITY

For services rendered as itemised below

Date 1965	Service	Pilot	Pool Fund			Sundries			
			£	s.	d	£	s.	d	
10	Nov. 7	To Inward Pilotage Kingston Compulsory and Optional areas.	H.M. Brown	47	11	-			
		To Transportation to Sea and from Esso Refinery.	"				1	15	-
20	9	To Outward Pilotage Kingston Optional and Compulsory areas.	"	47	11	-			
		To Transportation to Esso Refinery and home after sailing ship	"				1	15	-
		To Premium Fee 15% of £95. 2/-	"				14	5	4
				95	2	-	95	2	-
		Certified Correct	Total				112	17	4

Master

Received Payment

30 Approved.....

.....

Exhibit 5

EXHIBIT 5

COPY LETTER FROM W.G. CHEVANNES TO PILOTS ASSOCIATION OF JAMAICA 1958

Copy letter
from W. C.
Chevannes
to Pilots
Association
of Jamaica
1958

8½ Cassia Park Road,
KINGSTON 10

29th January
1960

29th January, 1960

The Secretary,
Pilots Association of Jamaica 1958,
16, Westlake Avenue,
KINGSTON 5.

10

Dear Sir:

At the last meeting of the Kingston Pilotage Authority held on the 14th instant, I enquired about Pilotage Fees for the Optional and Compulsory Areas. After discussion and my asking if there would be any objection to have a test case of one special ship in the Supreme Court, the opinion was that the test case should be brought by the pilots themselves, as the Shipping Association was not raising any point about it.

20

Kindly place this matter before your next Managing Committee Meeting for their immediate attention.

Yours faithfully,

W. G. CHEVANNES
Member - Kingston
Pilotage Authority.

IN THE PRIVY COUNCIL

No. 19 of 1970

ON APPEAL FROM
THE COURT OF APPEAL OF JAMAICA

B E T W E E N:

ARNOLD MALABRE & CO. LTD.

(Defendant)
Appellant

- and -

REGINA ATS KINGSTON PILOTAGE AUTHORITY

(Plaintiff)
Respondent

RECORD OF PROCEEDINGS

CLIFFORD-TURNER & CO.,
11, Old Jewry,
London,
E.C.2R BDS

Solicitors for the Appellant

JAQUES & CO.,
2, South Square,
Gray's Inn,
London, WC1R 5HR

Solicitors for the Respondent