

1914  
 April 2.

## TORONTO ADMIRALTY DISTRICT.

C. H. STARKE DREDGE & DOCK  
 COMPANY.....PLAINTIFFS;

AGAINST

THE SHIP *WILLIAM S. MACK*

*Shipping—Collision—Rules of the Road—Failure to observe—Negligence.*

In case of a collision between vessels, when damage has accrued, the responsibility lies upon the ship guilty of negligent navigation in failing to observe the rules which should have governed her course and speed.

THIS was an action for damages for collision, and was tried at Windsor, on March 23rd and 24th, 1914, before the Honourable Mr. Justice Hodgins, Deputy Local Judge of the Toronto Admiralty District, when judgment was reserved, counsel to put in written argument.

The facts of the case are fully set out in the reasons for judgment.

*F. A. Hough*, for plaintiff.

*J. H. Rood*, for defendant.

HODGINS, D. Lo. J., now (April 2nd, 1914) delivered judgment.

The west half of the Ballard Reef Channel, which stretches north-westerly from the north end of the Limekiln Channel, in the River Detroit, was closed to navigation from 23rd of August, 1913, until some time after the accident in question here.

This left the east half, three hundred feet in width and twenty feet deep, open; and the black gas buoy No. 71 was shifted to the eastward at the southern end

of the channel so as to prevent vessels using the west half, which the plaintiff company was at work deepening. This end was also marked by a light ship, and there is a distinct bend in leaving the Limekiln Channel for the other, which latter channel is only used for upbound craft.

There was in use, belonging to the plaintiffs, a tug, drill, dredge and scow, and on the 11th of September, 1913, the drill was at work and stationary, the dredge lying to the south of it, and the tug *Milwaukee* was tied up at Texas Dock beyond and across the east half of the channel, on which dock is Duff and Gatfield's reporting station mentioned in the evidence.

The work was in charge of engineers employed by the United States Government; and one of them, Wright, states that there were three spar buoys marking the dividing line between the east and west halves of the channel, extending over one mile north of the lightship, the most southerly being 1200 feet north of the lightship, showing a white light at night.

A steamer, the *Byers* upbound, grounded on the *débris* caused by the operations just on the dividing line between the east and the west halves, 500 feet north of this spar buoy, or 1700 feet north of the lightship. This occurred on the night of the 11th of September, 1913. The *Byers*, owing to the force of the current, began to swing, pivoting upon the *débris*, the point of contact being just abaft her smoke-stack. This allowed the forward two-thirds of her length to swing to the westward. The drill found herself in danger and got up her anchors, or spuds, cut her kedge, and signalled the tug *Milwaukee* to come to her assistance. Both the swing of the *Byers* and the current drove the drill down stream, and the two vessels were practically in contact until the *Byers* stuck in the position shown

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on exhibit 2. The tug had come across, took the drill in tow and headed up stream to pull her around the stern of the *Byers*, which was sixty feet over into the east half of the channel. The defendant ship, the *Mack*, just then hove in sight, coming up out of the Limekiln Channel, 1700 feet to the south.

The action arises out of a collision between the *Mack* and the drill which occurred shortly after, and the contest centres round the exact courses held by the tug and drill and the *Mack*, and their actions during the intervening time.

The night was clear and there was moonlight. Captain McCauley of the tug, O'Neill foreman of the drill, and Captain Ferguson of the *Mack* all seem to have sighted each other about the same time, i.e., when the *Mack* was south of the lightship at the south end of the Ballard Reef Channel. In this agrees the United States Government Inspector, Colton. The tug went south before turning to get hold of the drill and this probably accounts for Captain Ferguson saying he saw both green and red lights as he looked north. In consequence the question as to whether the spar buoy was lighted on that night is unimportant, though the Captain of the *Byers* gives it as a reason why he was so close to the west side of the east half of the channel.

The natural thing for the tug to do is what its captain says he did, i.e., to go upstream, past the stern of the *Byers* so as to get the drill back to where she was. The captain of the *Mack* admits that when on the last reach of the Limekiln Channel he thought there was trouble and checked to slow, i.e., three miles an hour. He then heard four whistles, which he says he did not understand. This was either the signal blown by the drill and dredge or from the tug before she

started with the drill in tow. He, however, blew a danger signal when he had got 500 or 600 feet above the turn because, as he says, he saw the tug starting out into the channel. He knew the west half was closed, and, therefore, that he had to navigate in a 300 foot channel. He also admits that the *Mack* handles well, and he and his mate say they could hold her against the current for an indefinite time, which, as explained in the evidence, means that the *Mack* could have been held at the point he had then reached, practically motionless, by keeping the engines going against the current. He then heard four blasts from the tug, says he did not understand them, but he stopped and went full speed astern. As the accident happened 1700 feet above the entrance to the Ballard Reef Channel it is hard to reconcile his testimony with the facts. The *Mack*, he says, would stop in that current when going full speed astern in her length, 380 feet, so that, adding that to the 500 or 600 feet would still leave the *Mack* about 700 feet south of the point of collision. Evidently from the fact that after her first four whistles, the *Mack*, gave a passing signal, he must have proceeded, before stopping, much farther north; and indeed Captain Ferguson admits that he was 50 feet out from the Texas Dock and 200 feet south of it when he struck the drill, and on cross-examination says he stopped his engines a second time when he thought he would strike the dock. He claims that he had the right of way as he had the tug on his port bow and that his passing signal was not answered. The captain and mate of the tug say it was. At one time Captain Ferguson states that he was 200 feet south of the dock and practically standing still when the tug was drifting down on him at right angles and crossing the channel.

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I am satisfied that the tug when engaged in this difficult manoeuvre, with a heavy drill in tow, would not, in the face of an upbound vessel, attempt to cross the river exposed to the current and, therefore, necessarily drift down upon the *Mack*. I accept the account given by those on board of her that having pulled the drill round they endeavored to hold her and the tug steady till the *Mack* passed. They succeeded in doing so, except that the drill swung to and fro in the current. If the drill was not swinging she would have been hit in the stern. The tug, after the passing signal, blew a danger signal as the *Mack* was not far enough to the east, to which the *Mack* responded, and the tug then blew again. All of the plaintiff's witnesses say that the *Mack* showed no appearance of stopping or checking, during the time they saw her coming up. The account given by those on the *Mack* as to their position and that of the tug and drill at the time of the collision seems to be somewhat incredible. The captain says the *Mack* was 50 feet out from the dock and that the tug had not crossed his bow at all. His mate puts the *Mack* 20 feet or less away from the dock. Kelly, in charge of the signal station on the dock, gives the east side of the channel as 50 to 75 feet out from the dock which would leave the *Mack* out of and to the east of the channel.

The *Mack* struck the drill 19 feet aft of her forward end. The tow line between the tug and the drill was about 50 feet long, so that the tug must have been close to the Canadian shore or the deck if she were towing straight across. If the *Mack* was fifty feet out from the dock the drill must have been at least as close and I cannot see how she could have got in that position in view of the fact that she was being towed, unless the tug had gone across the bow of the *Mack* and turned

north close to the dock, but Captain Ferguson is clear that the tug did not cross his bow.

It is possible that the endeavors of the tug to pull the drill around may have thrown both further east in the channel than is admitted. But this only accentuates the necessity for extreme caution on the part of the *Mack*. The evidence of the engineer of the *Mack* is that he checked speed at 6.45 p.m. and at 7.01 p.m. went full speed astern for about one and a half minutes, and then full speed ahead at 7.05 p.m. This gives seven minutes under check, in which the *Mack* would have travelled, at three miles an hour, which is the speed her captain gives, about 1700 feet. This indicates that the *Mack* was not checked in reasonable time before the collision. Assuming in her favour that she had checked while still in the Limekiln Channel, and had gone full speed astern when 500 or 600 feet north of the lightship, and that the *Mack* was 200 feet south of the dock when the collision took place, and then went full speed ahead for half a minute to give her a kick to the west and then reverse again, it is difficult to see how she could have traversed the intervening distance if the engineer's time is correct.

Upon the whole, and after carefully considering the evidence, much of which I have not cited, and the written arguments put in after the trial, I come to the conclusion that the *Mack* was wholly to blame, was negligent in navigation and failed to observe the rules which should have governed her course and speed under the circumstances.

Judgment will go condemning the *Mack* in the damages fixed by the Deputy Registrar at Windsor, to whom the assessment of damages is referred, with costs.

*Judgment accordingly.*

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