

Nova Scotia Admiralty District

BETWEEN:

HIS MAJESTY THE KING.....PLAINTIFF;

AND

MARITIME TOWING AND SALVAGE }  
LIMITED and PRICE NAVIGATION } DEFENDANTS.  
COMPANY LIMITED..... }

1946

Feb. 12

Aug. 26

*Shipping—Damage to pier in Halifax Harbour—Defendant's ship not direct or effective cause of damage—Action dismissed.*

The ship *Empire Foam* while being towed to a berth in Halifax Harbour was bumped by a tug named the *Chicoutimi* owned by Maritime Towing and Salvage Limited. Subsequently in the effort to berth the *Empire Foam* she struck the marine tower or leg of Pier 25 belonging to the National Harbour Board with resultant damage. The Crown alleges that such damage was due to the injuries sustained by the *Empire Foam* when bumped by the *Chicoutimi*.

*Held:* That the negligent operation of the *Chicoutimi* was not the direct or effective cause of the damage to the pier, and the action must be dismissed.

- 2. That since there was no proper look-out on the *Empire Foam* to report to the bridge of such vessel anything that might affect the navigation of the ship the pilot did not know the true situation about many pertinent and relevant circumstances and such lack of knowledge was responsible for the *Empire Foam* striking the pier.

ACTION by the Crown to recover damages for loss sustained through the alleged negligent navigation of a tug owned by defendant Maritime Towing and Salvage Limited.

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The action was tried before the Honourable Mr. Justice Carroll, District Judge in Admiralty for the Nova Scotia Admiralty District at Halifax.

*J. E. Rutledge, K.C.* for plaintiff.

*F. D. Smith, K.C.* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

CARROLL D. J. A. now (August 26, 1946) delivered the following judgment:

On the 21st of April, 1942, while the *Empire Foam* a 10,150 ton cargo ship was being towed to Pier 25 of the National Harbour Board's port facilities at Halifax, she came in contact with the leg of the pier and damaged it. The plaintiff asserts that the damage was caused by the negligence of the defendants.

At the trial the action against the Price Navigation Company was dismissed by agreement of counsel.

The *Empire Foam* with pilot Harris H. Mosher was taken from Bedford Basin around Georges Island under her own steam and near the east end of Georges Island two tugs, the *Bansurf* and the *Dupres* were picked up for towing and were made fast about 400 ft. off the mouth of Basin No. 1 in or on which are piers or berths Nos. 23, 24, 25 and 26. The locations are shown on the plan produced in evidence by the plaintiff; 23 and 24 being on one side of the Basin; 25 and 26 on the other or the southerly side. 23 and 26 are on the outer end of the Basin and 24 and 25 on the inside.

On the day in question Berth 25 was clear or vacant, there was a ship at Berth 24 and one at 23 and also a scow and a tug on the outside of this ship. The tug *Dupres* was on the port bow of the *Empire Foam* with a short nose line to the *Foam*. The *Bansurf* had a towing line from the port quarter of the *Empire Foam* so as to tow her stern into the Basin. Owing to the construction of the *Foam* it was necessary that she be towed in stern ahead so that when moored her starboard side would be next to the Dock. The

port anchor was dropped with about 15 fathoms out to keep the bow from drifting off. In addition the *Empire Foam* was using her engines to assist, in reverse of course.

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At Pier 26 there was a tug, the *Chicoutimi* under charter or owned by the defendant Maritime Towing & Salvage Ltd., located about the middle of the Pier. She had taken on coal and was waiting for the bill of account for same. The Pier is about 700 ft. long. The tug was sighted by the pilot of the *Empire Foam* when off the Basin and the tug sighted the *Empire Foam* when off the head of the Pier. The Captain of the *Chicoutimi* says that under the circumstances he thought it prudent to leave the Pier and get away before the *Empire Foam* came along, because it was possible that the vessel, being towed, might crash into him. I agree that if there was real danger of such crashing that the Captain of the *Chicoutimi* took the proper course for getting away and properly manoeuvred his ship in the attempt, the result of which was that he struck the tow rope of the *Bansurf* and then the rudder of the *Empire Foam*. There was a slight chafe made in one strand of the tow rope (it was a three strand rope) and the contact with the starboard side of the *Chicoutimi* and the rudder of the *Empire Foam* caused a slight dent in the rudder about one foot above the water line. It was in the effort to berth the *Empire Foam* after this accident that she struck the marine tower or leg of Pier 25 with the resultant damage. I find as a fact that the chafing of the tow rope had but very little effect on the serviceability of the rope for towing purposes and the services the tug was hired to perform; that the tow rope was not changed, that is, no other tow rope was substituted for it before the *Empire Foam* was docked and I find too as a fact that the rudder of the *Empire Foam* lost absolutely none of its efficiency through the contact with the *Chicoutimi*. I find those facts notwithstanding some evidence to the contrary.

I think the master of the *Chicoutimi* was not in any real danger by remaining where he was, especially if he moored his ship side on to the Pier, and that he misjudged the speed of the on-coming *Empire Foam* and misjudged

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the time necessary to make the manoeuvre which he had undertaken, and that he should have known he was taking a long chance in trying to get out. In other words, his was a negligent action.

However, it was not the negligence of the *Chicoutimi* that was the direct or effective cause of the damage to the Pier.

The *Empire Foam* was in the centre of the Basin at the time of the collision with *Chicoutimi* and coming in parallel with Pier 26 which means that her starboard end was 135 feet from that Pier. When the *Chicoutimi* got clear, the *Empire Foam* was in the same position as regards Pier 26 as she was previously, parallel thereto and approximately 135 feet therefrom. The only change in her position was that she was probably a few feet further out in the Basin—in other words, she was in as good a position to get properly docked as she was previous to the accident and being a bit further out, would I think be an advantage.

There was no proper look-out on the *Empire Foam* whose duty should be to report promptly to the bridge anything that might affect the navigation of the ship and as a result, the pilot did not know the true situation about many pertinent and relevant circumstances. He did not know whether the *Bansurf* was towing and undertook to manoeuvre his ship lacking that knowledge, this in view of the fact that the *Bansurf* was a most important factor in mooring his ship. The pilot practically admits that the manoeuvre of his ship lacking that knowledge of the true situation was the cause of the damage to the marine leg. His evidence follows:

Q. That is you put her ahead and then put her astern and then you put her ahead again. (This after the *Chicoutimi* was clear).

A. I maybe put her ahead first, and put her ahead and put her astern again and probably that is the manoeuvre that brought us in the marine leg.

Q. And this took twenty minutes between the time of the collision and the time you struck the marine leg.

A. I didn't tag it. It seemed to me to be about that length of time.

Q. And you didn't know during that time if the tug *Bansurf* was holding your stern up or not.

A. I can't say if it was, although he was supposed to be fast and I don't know whether he was pulling or not owing to some trouble about the towing line.

Q. You don't know?

A. No.

Previously he had testified as follows:

I seen that (the *Chicoutimi*) going through our tug line and across our stern. It cut our line.

And further on in his evidence he testified:

Q. How did she pass the towing rope of the *Bansurf*?

A. It is a mystery to me. I don't know. She might have gone over it or under it.

The fact of the matter is that the *Bansurf* did not go through or over or under the tow rope but got away on the starboard side of the *Empire Foam*. The pilot signalled the tug to resume pulling after the *Chicoutimi* cleared, says he got no return signal or heard none but he recollects a message came back that there was something wrong with the line, and that at a time when he says himself the tow rope had been cut by the passing through of the tug.

I apprehend that it was necessary to have a tow for this ship to be safely moored and if the pilot was not sure of the service of his tow he should not have taken the chance he did, but should have done as Capt. McRitchie suggested—"gone full ahead and taken your anchor out with you."

The pilot did not get proper information as regards the condition of things or the true situation from the officers of the ship and it looks as if they did not have actual knowledge of the same because there was no proper look-out to advise or instruct.

It seems to me that the pilot must have exercised different manoeuvres after the collision than would be necessary if the *Bansurf* was pulling on her tow. He seemed vague concerning those manoeuvres. In fact, it seems that he was confused—the confusion brought about by the utter lack of knowledge of the situation, knowledge which should have been given him by the ship's officers.

These acts I think resulted in the damage complained of by the plaintiff.

The action will be dismissed with costs.

*Judgment accordingly.*

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