

The Commonwealth of Massachusetts

BOSTON, March 20, 1925.

To The General Court of Massachusetts.

In accordance with the provisions of chapter 48 of the Resolves of 1924, I have the honor to transmit herewith my report relative to the claim of Ludwig Towing Line, Inc. and others for damage caused to the Steamship "Anahuac" by reason of a collision with the Brightman Street drawbridge on the Taunton River at Fall River.

Respectfully,

JAY R. BENTON,
Attorney General.

[For a preliminary report, filed Oct. 15, 1924, see House document No. 119 of the current year.]

CHAPTER 48.

RESOLVE RELATIVE TO A CERTAIN CLAIM OF LUDWIG TOWING LINE, INC., AGAINST THE COMMONWEALTH.

Resolved, That the attorney general is hereby requested to investigate the claim of Ludwig Towing Line, Inc., and others as their interest may appear, against the commonwealth referred to in senate document number forty-nine of the current year, and to find the facts in relation thereto and the amount of damages sustained; to advise whether or not there is any legal obligation on the part of the commonwealth; and to recommend what action, if any, should be taken by the general court thereon, accompanying his recommendations by drafts of such legislation, if any, as is necessary to carry the same into effect. For the purpose of the investigation herein directed, the attorney general, or an assistant attorney general designated by him, may hold hearings, take evidence, administer oaths and issue subpoenas. The attorney general is hereby further requested to report to the general court by filing the same with the clerk of the house of representatives on or before October fifteenth in the current year, and at the same time to file a copy thereof with the budget commissioner as a part of the budget estimates required to be submitted under section four of chapter twenty-nine of the General Laws.

REPORT OF THE ATTORNEY GENERAL ON THE CLAIM
OF LUDWIG TOWING LINE, INC., AND OTHERS FOR
DAMAGE SUFFERED BY THE STEAMSHIP "ANAHUAC"
THROUGH COLLISION WITH THE BRIGHTMAN STREET
DRAWBRIDGE AT FALL RIVER.

STATEMENT OF THE CASE AND FINDINGS.

The claim referred to in chapter 48 of the Resolves of 1924 is for damages occasioned by a collision between the oil tanker "Anahuac" and the Brightman Street drawbridge over Taunton River at Fall River, which collision occurred about two o'clock in the morning of December 21, 1922.

As to the interest of the parties, I find that the "Anahuac" was owned by the United States Shipping Board and chartered by that board to either the Ludwig Towing Line, Inc., or to a corporation named the Anahuac Steamship Company;

and at the time of the accident had been rechartered by one or both of the last named corporations to the New England Oil Refining Company. There is considerable inconsistency and uncertainty in the testimony introduced before me as to the relative rights and interests of the Ludwig Towing Line, Inc., and the Anahuac Steamship Company; and there appears to have been much dispute between these two companies as to the rights and relations between them. This difficulty, however, seems to have been cleared up by the execution of an instrument by the Ludwig Towing Line, Inc., assigning all its interest in the present claim to the Anahuac Steamship Company and authorizing the Commonwealth to pay any sum which may be paid in connection with this claim to the Anahuac Steamship Company. It appears that the United States Shipping Board Emergency Fleet Corporation, through its insurance department, has paid to the Ludwig Towing Line, Inc., on account of this accident, the sum of \$3,248.44. A claim for reimbursement of this sum by way of subrogation has been made by the United States Shipping Board Emergency Fleet Corporation, through the office of the United States Attorney for the District of Massachusetts.

As to the cause of the accident, it is the contention of the claimants that while the "Anahuac" was passing through the draw the drawtender lowered the west leaf of the draw upon the boat.

The "Anahuac" is an oil tanker about 183 feet in length. At 1.50 A.M., on December 21, 1922, having loaded with oil at the dock of the New England Oil Refining Company on the Taunton River, she proceeded down stream for New Bedford. When about a mile above the Brightman Street Bridge the boat whistled for the draw to open and the whistles were repeated before the boat came to a point 700 or 800 feet distant from the bridge.

The Brightman Street Bridge is a bascule type, *i.e.*, the draw is opened by raising the two leaves on end. The power for raising each leaf is applied through a separate controller.

As the "Anahuac" approached the bridge from the northerly side it was observed from the boat that the bridge was not open. Thereupon the engines were stopped and the boat came to a rest, or practically so, at a distance 700 or 800 feet from the bridge; and again whistles were blown as a signal for the draw to open. It was then observed from the boat that the leaves of the draw began to open and the signal was then given to go slow ahead, and the boat proceeded toward the draw, aided somewhat by the ebb tide.

The first mate, Gunderson, who was lookout on the forecastle head and who had given the signal to go ahead upon seeing the draw begin to open, testified that the next thing he observed was, when the bow of the boat was about 75 feet from the leaves of the draw, that the west leaf of the draw had not reached a sufficient elevation to make it appear safe for the boat to proceed; that he immediately called out to reverse the engines; that this was done, but that, in view of the ebb tide which was running, a collision resulted; that the fore part of the boat passed safely through the easterly side of the draw, the east leaf being at that time either wholly raised or at least raised to a higher point than was the west leaf; that the smoke-stack and the mainmast, however, caught against the west leaf close to the tip of that leaf and were demolished. Mate Gunderson further testified that between the time when he gave the signal to go ahead from the point 700 or 800 feet distant from the bridge and the time when he looked up and saw that the west leaf had not reached its full elevation (at which time the bow of the "Anahuac" was about 75 feet distant from the bridge) he paid no attention to the leaves of the draw.

It appeared that the width of the "Anahuac" was 31 feet and that the stretch of open water when one leaf alone was raised would be 50 feet.

Some testimony was given by the captain and the second mate, both of whom were in the pilot house at the time, to the effect that the west leaf descended immediately after the foremast had passed through the draw. The second mate testified that his attention was largely occupied in steering the boat. The captain's testimony, apart from other considerations, is discredited by the fact that when asked on January 8, 1923, at a hearing by a board of United States local inspectors,

concerning the cause of the accident, the captain failed to make any statement to the effect that a leaf of the draw descended on the boat while the boat was passing through the draw. I quote from the testimony of the captain given at that hearing.

"Q. What caused the collision?

A. They opened the bridge on us about five minutes before we got to it. They opened one of the spans. I was already stopped. I was stopped about ten minutes, we were just drifting down with the tide. I would give her a little headway to straighten her up and blow to the bridge. Most of the time they wouldn't open until we got on top of it. I saw one draw wide open and the other partly open, and they stopped for some reason or other. I had the chief mate on the bow and their lights are bad. They have very bad lights there, the lights shine in your eyes. We got way down until we got on top of it. But they don't open until we get on top of it.

Q. The collision was caused by your making judgment the bridge would be open, and when you got there they didn't open it?

A. They had one side open.

Q. They had one open and the other party open?

A. Yes.

Q. You thought they would continue to open?

A. Yes.

Furthermore, the account of the accident as originally entered in the log contained no reference to the accident having been caused by the lowering of a leaf upon the boat while in the draw. Here again, if the accident had been caused by such an act of gross negligence on the part of the drawtender and in a manner from which no suggestion of blame could attach to the boat, it seems inconceivable that the fact should not have been stated. Mr. Williams, Commissioner of Public Public Works, made a copy from the log on December 23, 1922. Although this was not a verbatim copy, I am satisfied from Mr. Williams' testimony that there was no reference in the log at that time to the leaf having been lowered upon the boat. Mr. Williams' copy recites in part:

"Discovered west wing open part way. Stopped engine and on word from Chief Mate went full speed astern, but due to strong tide ship did not respond quick enough and collided with west wing of draw;"

It is true that a photostatic copy of the log entries of December 21st, produced at the hearings, shows the following entry:

"Proceeded slow ahead after getting headway in ship and her bow entering draw we discovered the west wing of bridge opened part way and stopped, paused & lowered. Receiving word from the chief mate to go full speed astern we did so and the headway of ship due to strong ebb tide did not respond quick enough which caused us to collide with the west wing of draw fouling our rigging on starboard side of foremast, carrying away rigging on starboard side of foremast also knocking down funnel and mainmast and rigging."

It appears, however, from an inspection of the photostatic copy that the words "paused & lowered" after the word "stopped" are written in a cramped hand, presenting an entirely different appearance from the rest of the page. Probably these words have been substituted for the word "engine." In any event there seems to be no reasonable doubt but what these words have been inserted by someone after December 23rd, when Mr. Williams made his copy. I find the testimony of the captain and second mate not so convincing as the testimony of Mate Gunderson, who was in a better position to see what occurred and whose duty it was to observe what occurred.

Also it may be noted that a leaf once raised, or in the process of being raised, could not be lowered except by positive action on the part of the drawtender, i.e., the drawtender would have to throw back the controller to neutral, then throw the lever to reverse, and then apply the power by the controller.

On all the evidence I am clearly of the opinion that the accident was not caused by lowering a leaf upon the boat as contended for by the claimants.

Any slowness on the part of the drawtender in starting or putting in motion the leaves of the draw seems to be immaterial for the reason that the "Anahuac" was

brought to a stop some 700 or 800 feet away from the draw, and it was then observed that the draw was not open; and that the boat recommenced its course toward the bridge only when it was observed that the draw had begun to open.

It may be that the drawtender, having started the leaves in motion, did not get the west leaf fully elevated as quickly as he might well have done. I do not, however, feel justified in making a finding upon this question, because it was the contention of the claimants that the drawtender did have both leaves sufficiently elevated at the time that the boat entered the draw and that the accident was caused by his lowering the west leaf upon the boat; and the evidence naturally centered upon this issue.

If, however, it be assumed that, contrary to the claim of the petitioners, the drawtender was slow in raising the west leaf after the opening of the draw had commenced, I find that those in charge of the boat were negligent in paying no attention to the position of the leaves after they observed the leaves first begin to open and after the boat started toward the draw from its position of rest some 800 feet away. The lookout, Gunderson, (and others) testified that from the time when the boat started forward under power from its position of rest 700 or 800 feet from the draw no further attention was given to the draw until practically at the moment of collision. There were lights on the leaves of the draw which made the position of the leaves discernible to any one who looked. There was a red light at the end of each leaf, which light showed green when the leaf was fully open; and this system of signal was known to those in charge of the "Anahuac" who had been through the draw many times before. I find that whether or not the drawtender was slow in getting the west leaf fully elevated, the accident would have been avoided if those in charge of the boat had paid any attention to the position of the leaves while the boat was covering the 700 or 800 feet between the starting point and the draw.

I report that, on any view of the facts, there is no legal obligation on the part of the Commonwealth arising out of this accident for the reason that there is no statute permitting the claimants to sue the Commonwealth in the State courts, and the Commonwealth is not subject to suit in the Federal courts.

As to damages suffered, I find that the bill for repairing the "Anahuac" was settled for \$3,400; that the New England Oil Refining Company made a deduction from charter hire on account of the time the boat was out of commission for repairs, which deduction amounted to \$3,025.08; that expenses for service and towage amounted to \$456.44. The total of these items is \$6,881.52. As previously stated, the United States Shipping Board Emergency Fleet Corporation, through its insurance department, has paid the Ludwig Towing Line, Inc., on account of this accident the sum of \$3,248.44.

For the reasons above set forth I do not feel justified in recommending that the Commonwealth reimburse the claimants for any damage suffered.

Respectfully submitted,

JAY R. BENTON,
Attorney General.