

No. 65.

RECORD

DECISION OF MR. JUSTICE DRYSDALE.

*In the
Exchequer
Court of
Canada,
Nova Scotia
Admiralty
District.*

No. 65.
Decision of
Mr. Justice
Drysdale,
April 27th,
1918.

The actions here are being tried together, viz., the Claim vs. the Imo, now lying in the harbour, and the Counter-claim vs. the Mont Blanc. The circumstances attending the collision of these two ships were investigated before me, assisted by two of the best nautical assessors in Canada, and by common consent the evidence adduced on the investigation is to be considered the evidence in this case. The only attempt to vary the evidence in the investigation, is that of one Makinney, called on the trial herein. As to Makinney's evidence I have only to say that he did not impress me as throwing any light on the situation. His manner was bad and his matter worse. In short, I did not believe him. Altho he professed to be an eye-witness of the collision, I am convinced that he did not add any light to the controversy. He failed to convince me that he knew what he was talking about. Notwithstanding, he professes to be an eye-witness to the collision, I am quite sure that he could not place the point or place of collision within one-half a mile of the actual place of occurrence. I think this man was a belated occurrence in the enquiry and came with a story, the result of instruction, and that on behalf of the French ship, I do not believe him. 10

As to fault or blame for the collision I am of opinion that it lies wholly with the Mont Blanc. Once you settle where the collision occurred and I think it is undoubted that it occurred on the Halifax side of mid-channel you find the impossibility of the story of Pilot Mackay. Even if you say mid-channel the story of the French ship is absurd. The fault to my mind clearly appears to have been the result of the last order of the Mont Blanc when being in her own waters on the Dartmouth side she took a starboard helm and reached for the Halifax wharves thus throwing herself across the bow of the outcoming ship Imo. Why this order was given I know not but I feel sure it was gross negligence and in so thinking I am supported by the advice and opinion of both nautical assessors. The order for a starboard helm and to lay a course suddenly across the harbour was justified by the officers in charge of the Mont Blanc as an emergency order to prevent a collision but taking into consideration the then position of the two ships this claim will not bear investigation. 20

I find the Mont Blanc solely to blame for the collision. I refer the question of damages to the Registrar and two merchants.