

# In the Privy Council.

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## ON APPEAL

FROM THE EXCHEQUER COURT OF CANADA.

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BETWEEN

The Steamer " PHILIP T. DODGE " (Defendant) - *Appellant*

AND

10 DOMINION BRIDGE COMPANY LIMITED,  
DUFRESNE CONSTRUCTION COMPANY,  
LIMITED and LA COMPAGNIE DU PONT  
DE GASPE LIMITEE (Plaintiffs) - - - *Respondents.*

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## Case for the Respondents.

RECORD.

1. This is an appeal from the Judgment of The Exchequer Court of Canada, in Appeal, rendered 20th June 1934, affirming a Judgment of the Local Judge in Admiralty, Quebec Admiralty District, rendered 3rd January 1934, which maintained the Respondents' (Plaintiffs') action against the Appellant with the usual order for assessment of damages. p. 90.  
p. 87.

20 2. The Respondents are the builders and owners of a bridge erected across the York River at Gaspé, in the Province of Quebec. Their respective interests are set forth in the contracts which have been filed as Exhibits P-1, P-2, P-8 and P-9, which interests for purposes of this appeal may be regarded as one and identical. No question of the quantum of damages is here involved. pp. 118, 121, 107, 115.

3. The building of the bridge was duly authorized by both the Federal and Provincial Governments, and it was built in accordance with such authority. pp. 113, 124, 126.  
pp. 102, 104, 111, 116.

30 4. The bridge lies north and south and is of the bascule type having two bascules or leaves which lift up from the centre similar in operation to the London Tower Bridge. " The distance between the two piers upon which the bascules rested was ninety feet so that if the Dodge (the Appellant Steamer) when passing through the draw, was directly in the centre thereof there would be a free space of twenty feet on each side of her." (Maclean, J.) p. 91, l. 16.  
p. 12, l. 1.

- p. 87, l. 19.           5. On or about the 6th day of July 1932 when the bridge was in course of construction and with the north bascule in position the Appellant Steamer "Philip T. Dodge," while proceeding, for the first time, through the draw of the bridge, came into collision with its north bascule wrenching it from its foundation and causing the resultant damage which formed the basis of the Respondents' action. The course of the steamer was westerly.
- p. 138.
- p. 7, l. 18,  
p. 6, l. 31.           6. The Appellant's defence in substance was (A) that the bridge constituted a public nuisance, and (B) that the casualty was due to inevitable accident. 10
- p. 88, l. 27.           7. In dealing with the first point of defence the learned trial Judge (Demers, J.) held that "The Federal Government having the control of navigation, I consider that its approbation of the plan of a bridge settles the point as to the proper construction of this bridge."
- p. 92, l. 40.           8. In appeal the President of The Exchequer Court (Maclean, J.) likewise found, in dealing with the first point of defence, that "The plan of the bridge was approved by the Department of Public Works, and the Department of Marine, at Ottawa, but the plans and drawings do not show the Davies wharf on the upper side of the bridge, or the existence of a shoal on the lower side of the bridge. In any event, the issue as to whether the 20 bridge constitutes a public nuisance was not, I think, tried out, and, in my opinion, no ground work was laid for the determination of so important and serious an issue, and I therefore express no opinion upon it. I understood Mr. Beauregard (of Counsel for Appellant) so to agree . . ."
- p. 93, l. 21.           9. On the second point of defence the President of the Exchequer Court said: "In the same season the 'Dodge' made fifteen additional trips through the bridge without any mishap and her master stated that in such trips he exercised greater caution, particularly with his 'engines' and in this I think he must have had in mind the speed of his ship. I think the speed of the 'Dodge' in passing through the bridge opening was, in 30 the circumstances, excessive." . . . "And that conclusion as to the speed of the 'Dodge' in passing through the bridge contains the answer to the contentions that the master of the 'Dodge' navigated his ship with reasonable care, and that the accident was inevitable."
- p. 92, l. 21.  
p. 76, l. 5.           10. The question of current was disposed of by the President of the Exchequer Court in his finding that "I am not disposed upon the evidence to attach importance to the question as to whether or not there was a current or that it in any way contributed to the accident. There was a slight current passing directly through the draw, but, even if it struck somewhat to the north I do not think upon the evidence that it 40 was itself of such consequence as to create any serious or added difficulty in navigating a ship through the bridge."

11. The learned trial Judge, with the assistance of an experienced Assessor, found that the Master of the "Dodge" had not made himself acquainted with local conditions. Otherwise "he would not have navigated with such speed." p. 89, l. 3.

12. While passing through the bridge and when still in the gap or opening the Master was at the wheel and "for fear of striking Davies wharf, eight hundred feet ahead, he put his helm to starboard." (Demers, J.) p. 89, l. 5.

13. The Master admitted a speed of four knots at the time of the collision and the evidence of independent shore witnesses indicated an even greater speed. p. 26, l. 32.  
p. 63, l. 8.  
p. 71, l. 33.  
p. 74, l. 2.

14. The excessive speed of the "Dodge" coupled with the Master's faulty and premature helm action before the steamer was clear of the bridge caused the starboard corner of the poop to collide with the north bascule of the bridge. p. 93, l. 27.

15. The concurrent findings of fact of the Courts below are definitely incompatible with, and it is submitted constitute a complete refutation of, the Appellant's defence.

The Respondents respectfully submit that this appeal should be dismissed and that the Judgment of the Exchequer Court of Canada and of the Local Judge in Admiralty should be affirmed for the following, among other reasons :

### REASONS.

- (1) BECAUSE the cause of the casualty was the negligent and improper navigation of the Appellant steamer in the matters of (A) excessive speed, and (B) faulty helm action, on which there are concurrent findings of fact of the Courts below.
- (2) BECAUSE the principle of *res ipsa loquitur* applies and the Appellant has failed to rebut the adverse presumption of fault and negligence arising therefrom.
- (3) BECAUSE the construction of the bridge was duly authorised by both the Federal and Provincial Governments and was built in accordance with such authority.
- (4) BECAUSE the Judgments of the Exchequer Court of Canada in Appeal and of the Local Judge in Admiralty were correct and should be affirmed.

C. RUSSELL McKENZIE.

No. 24 of 1935.

**In the Privy Council.**

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ON APPEAL

*From the Exchequer Court of Canada.*

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BETWEEN

The Steamer "PHILIP T. DODGE"  
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AND

**DOMINION BRIDGE COMPANY LIMITED,  
DUFRESNE CONSTRUCTION COM-  
PANY, LIMITED and LA COMPAGNIE  
DU PONT DE GASPE LIMITEE**  
(Plaintiffs) *Respondents.*

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**Case**

FOR THE RESPONDENTS.

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