"Thrive by Thrift, Buy War Savings Stamps."

LIGHTHOUSES

IN REPLY REFER TO
FILE No. 81095

1921 FEB 2 PM 2 34

898

AEK

DEPARTMENT OF COMMERCE

STEAMBOAT-INSPECTION SERVICE

WASHINGTON

February 2, 1921.

Commissioner of Lighthouses,
Department of Commerce.

We requested S.I.S. for trip copies of these reports but their Insps. sent in trip and they need one for their files. Res. send both copies to 7th, one to be transmitted to U.S. Att. Gen. may refer to copy in S.I.S. if necessary. Mr Hoover says final reports of Insps. will be furnished BW when rec'd.

2/3 McI

2/4/21 Wrote 7th

In further reference to the Bureau's letter of the 20th ultimo, in regard to damage to aids of navigation by the tugs EDGAR F. CONEY and the NEPTUNE, you will please find enclosed herewith copy of a letter dated the 29th ultimo, received by this Bureau from the U. S. Local Inspectors at Tampa, Florida, together with complete file, in duplicate, in regard to the tug EDGAR F. CONEY.

Concur
If may Bu
can get S.I.S.
files for
reference
TC
2/3

Hydro
Mar Cons.
Mar Engr
Personnel
Accounts
~~Contracts~~
Chf. Clk.
Dep. Comr.
Comr.

for extra NCF 63

STEAMBOAT INSPECTION
1921 FEB 2 PM 2 08

Enclosure.

Deputy Supervising Inspector General.

Acting Commissioner of Lighthouses

Hillsborough

"Thrive by Thrift, Buy War Savings Stamps."

898 898

DEPARTMENT OF COMMERCE
STEAMBOAT-INSPECTION SERVICE
WASHINGTON

IN REPLY REFER TO
FILE No.

898.
McI:GP
Set inclosures.

February 4, 1921.

Superintendent of Lighthouses, Key West, Fla.

1. Referring to Bureau letter of February 2, 1921, relative to damage to Southwest Channel Light and Hillsboro Bay, No. 1, Light, Fla., by the tug EDWARD F. CONEY and barge CARDENAS and schooner G. J. BOYCE and tug NEPTUNE, respectively.

2. Herewith, in duplicate, for your information, guidance, and files, is copy of letter of January 29, 1921, from United States Local Inspectors, Tampa, Fla. to the Supervising Inspector General, together with copies of their reports of the investigations. One copy of each should be forwarded to the United States Attorney for use in connection with these cases. The Bureau has been informally advised that the final reports on these cases will be furnished when they are received from the Local Inspectors.

Acting Commissioner of Lighthouses.

"Thrive by Thrift, Buy War Savings Stamps."

898

IN REPLY REFER TO
FILE No. 81095

DEPARTMENT OF COMMERCE

STEAMBOAT-INSPECTION SERVICE

WASHINGTON

LIGHTHOUSES
1921 APR 26 AM 10 48

April 25, 1921.

Commissioner of Lighthouses,
Department of Commerce.

In further reference to previous correspondence in regard to damage to aids of navigation by the tugs EDGAR F. CONEY and the NEPTUNE, you will please find enclosed herewith testimony, in duplicate, received by this Bureau from the U. S. Local Inspectors at Tampa, Florida. The Local Inspectors at Tampa, Florida, advise that the schooner G. J. BOYCE, in tow of the steamer NEPTUNE at the time of the accident, has been lost since this accident, and that they have been unable to locate the master of this schooner, as he is out of this country. The testimony enclosed herewith concludes these cases.

Hydrog.
Engr. Cons.
Mar. Engr.
Personnel
Accounts.
Contracts
Chf. Clk.
Dep. Commr.
Commr.

STEAMBOAT INSPECTION
1921 APR 25 PM 3 30

8 Enclosure.

Deputy Supervising Inspector General.

H. B. BOWERMAN

Acting Commissioner of Lighthouses.

Office of Supt. of Lighthouses,
Key West, Florida,
June 25, 1921.

1. Returned to Commissioner of Lighthouses, Washington, D. C.

2. This office has been advised by the United States Attorney for the Southern District of Florida, that petition for rehearing in the above case has been set down before the Court for June 27, 1921, or as soon thereafter as Counsel can be heard.

W. W. Bennett

Superintendent of Lighthouses.

LWL

898

898
9 inclosures.

May 3, 1921.

S.W.Channel Lt. &
Hillsboro Bay Lt. #1,
Fla.

Superintendent of Lighthouses, Key West, Fla.:

1. Referring to Bureau letter of April 2, 1921, relative to damage to Southwest Channel Light and Hillsboro Bay Light No. 1, Fla., by the tug EDWARD F. CONEY and barge CARDENAS and the schooner G. J. BOYCE and tug NEPTUNE, respectively.

2. There are inclosed in duplicate, copies of testimony submitted by the Local Inspectors at Tampa Bay and forwarded to the Bureau by the Steamboat-Inspection Service by its letter dated April 25, 1921, (inclosed). One copy of this testimony should be furnished the U. S. Attorney for the southern district of Fla. and one copy retained in your files. It is requested that you cooperate with the U. S. Attorney as much as practicable in this matter. Submit further report at the proper time. Be guided accordingly.

H. B. BOWERMAN
Acting Commissioner of Lighthouses.

Office of Supt.of Lighthouses,
Key West, Florida,
June 25, 1921.

1. Returned to Commissioner of Lighthouses, Washington, D. C.

2. This office has been advised by the United States Attorney for the Southern District of Florida, that petition for rehearing in the above case has been set down before the Court for June 27, 1921, or as soon thereafter as Counsel can be heard.

W. W. Kinsell
Superintendent of Lighthouses.

In replying address
Commissioner of Lighthouses
LWL
and refer to date of this letter
and file No. 898

898

SUPT. OF LT-HS
JUN 16 1921
KEY WEST, FLA.

1921 JUN 28 AM 8 38

DEPARTMENT OF COMMERCE
BUREAU OF LIGHTHOUSES
WASHINGTON

U.S. v. William
H. Davenport.

June 11, 1921.

8-4-21 Wrote 7th

Superintendent of Lighthouses, Key West, Fla.:

1. Referring to letter of May 2, 1921 from the Attorney General to the Secretary of Commerce, a copy of which was forwarded to you on May 5, relative to a petition to be filed by the United States Attorney for the Southern District of Florida for re-hearing in the case of the United States v. Schooner WILLIAM H. DAVENPORT, arising from damage to Hillsboro Bay Light No. 2, Tampa Bay, Fla.

2. It is requested that you advise the Bureau whether or not a re-hearing has been granted and if not, what the present status of this case is.

H. B. BOWERMAN
Acting Commissioner of Lighthouses.

8/19/21 Reminder to 7th

Hydrog.
Engr. Const.
Mar. Engr.
Personnel
Accounts.
Contracts
Chf. Clk.
Dep. Comm.
Comm.

cu July 15
June 28

McI-GLL

Office of Supt. of Lighthouses,
Key West, Florida,
June 25, 1921.

1. Returned to Commissioner of Lighthouses, Washington, D. C.

2. This office has been advised by the United States Attorney for the Southern District of Florida, that petition for rehearing in the above case has been set down before the Court for June 27, 1921, or as soon thereafter as Counsel can be heard.

Wm. W. Kimerith
Superintendent of Lighthouses.

LWL
McI

LWL

898

898

U.S. v. William
H. Davenport.

June 11, 1921.

Superintendent of Lighthouses, Key West, Fla.:

1. Referring to letter of May 2, 1921 from the Attorney General to the Secretary of Commerce, a copy of which was forwarded to you on May 5, relative to a petition to be filed by the United States Attorney for the Southern District of Florida for re-hearing in the case of the United States v. Schooner WILLIAM H. DAVENPORT, arising from damage to Hillsboro Bay Light No. 2, Tampa Bay, Fla.

2. It is requested that you advise the Bureau whether or not a re-hearing has been granted and if not, what the present status of this case is.

H. B. BOWERMAN
Acting Commissioner of Lighthouses.

Inclosure Received

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

898

CHIEF CLERK
HTA-JHS

DEPARTMENT OF JUSTICE,
WASHINGTON, D.C.

1921 MAY 3 AM 8 52

HTA
TJS-190795-10

8/11/21 Wrote 7th
5/5/21 Copy to 7th

May 2, 1921.

Engr. Com.
Mar. Engr.
Personnel
Accounts.
Contracts
Chf. Clk.
Dep. Comm.
Commr.

Copies to 7th
HM
May 4

Engr. Com.
Mar. Engr.
Personnel
Accounts.
Contracts
Chf. Clk.
Dep. Comm.
Commr.

The Honorable,
The Secretary of Commerce,
Washington, D.C.

Sir:

I have the honor to advise you that the United States Attorney for the Southern District of Florida will file petition for re-hearing in the case of The United States v. Schooner WILLIAM H. DAVENPORT, in which case the trial judge recently dismissed the Government's libel, which was brought to recover damages for the injury to Hillsboro Bay Light or Beacon No. 2, situated in Tampa Bay. I enclose copy of my letter to the United States Attorney on the subject.

Respectfully,

6/11/21 Wrote 7th re status

For the Attorney General,

Annette Abbott Adams
Assistant Attorney General.

Enclosure 67033

Bureau of Lighthouses, Wash., Copy to _____ Sent.

898

Inclosure

HTA-JHS

TJS-190795-10

April 30, 1921.

Herbert S. Phillips, Esq.,
United States Attorney,
Tampa, Florida.

UNITED STATES v. WILLIAM H. DAVENPORT

Sir:

The Department acknowledges your communication of the 4th instant, and notes that you intend to present to the court a petition for re-hearing. This communication also refers to Mr. Atkins' conversation with you recently in Jacksonville, at which time you mentioned the situation of this case. Mr. Atkins stated that the Department would furnish you with a memorandum of cases supporting the views which he expressed to you, viz: that the effect of the collision and resultant damages to the Government beacon were sufficient to raise a presumption of negligence on the part of the Schooner, and that the burden of proof was on her to refute that presumption.

I note below a few cases bearing on the subject.

I assume there can be no question but that the law applicable to collisions between properly moored or anchored vessels and moving vessels would also be applicable to collisions between a Government buoy or beacon and a vessel.

Herbert S. Phillips, Esq., #2 April 30, 1921.

In the case of "THE OREGON" (158 U.S. 186), Justice Brown after stating that the "S.S. CLAN MACKENZIE" was anchored in a proper place, sounded proper signals and maintained a proper anchor watch said:

> "In this condition she was run into and sunk by the S.S. Oregon. The circumstances above detailed raise a presumption of fault on the part of the Oregon and the burden of proof is upon her to exonerate herself from liability."

In "THE DEAN RICHMOND" (107 Fed. 1001), Judge Wallace of the Circuit Court of Appeals of the 2nd Circuit, in commenting upon and agreeing with the opinion of the trial judge in a cause of collision between a moving vessel and one moored, said:

> "He (the trial judge) was of opinion that, unless the libellant's canal boat was not in a proper place a presumption of negligence arose against the steamboat from the fact of a collision with a moored vessel, and imposes upon her the burden of exonerating herself by exculpatory facts and that the evidence did not meet the burden thus imposed upon her."

In the case of "THE CHARLES HUBBARD" (229 Fed. 352), C.C.A., 6th Circuit, which was a collision between a moving and an anchored vessel, the opinion cites a number of cases relating to the presumption of faul and burden of proof under similar circumstances. In the course of the opinion it is stated:

"Since the testimony shows beyond substantial dispute that the Pollock was anchored in a proper place and that the officers of the Hubbard saw her lights and realized what her position was, in the language of the Supreme Court, we are not called upon to inquire wherein the Hubbard was not managed with proper nautical skill."

In my opinion, as stated in "THE CHARLES HUBBARD", the Government was not called upon to inquire wherein the Schooner was not managed with proper nautical skill. The burden was upon the Schooner to show that she was managed with such skill, and determining that fact, it would seem to me that the testimony of the expert called should be given great weight. I am not very familiar, of course, with the facts of the case, nor with the tidal or navigating conditions in that vicinity. It would seem to me, however, that if the vessel did lose headway, there would be nothing to prevent her dropping anchor to prevent her drifting on the buoy. If the wind was baffling prior to the vessel coming about, she would likely be held in fault for not sooner coming about. It seems to me that the weather conditions were not unusual. There is nothing in the case which seems to savor of force majeure.

As I read the opinion, particularly the last paragraph, it went off on the proposition that the Government had not sustained the burden of showing negligence on the part of the Schooner or those in charge of her navigation.

Herbert S. Phillips, Esq., #4 April 30, 1921.

The Government requests that you vigorously present the petition for re-hearing and hopes that the petition will be granted. If the petition is not granted, will you take steps to perfect an appeal.

Respectfully,

For the Attorney General,

Assistant Attorney General.

File 898

Wm. H. Davenport.

Called Justice, Mr. Athins, Br. 193, requesting that some action be taken by them. He stated that he would write us at one, explaining the full status of the case and that he would also write U.S. Att., requesting report and advising him, that if the case could not be reopened, to appeal the case, and would advise the Bureau when such report recd. Rec. call up in one week.

LWL 4/24/21

898

letter to Justice had been referred
rec. that case be reopened. U.S.Att.
se could only be reopened by applica-
ould be difficult to persuade the
Mr. Staley said he will get letter
rmation and should have an early reply.

1/21.

f Wm. H. Davenport. He advised that
and that same would be referred to
to make any comments on same it may

/21.

ecommendation.

21/21.

re cases of U.S. versus schooner
of Hillsboro Bay Lt. #1 and
at no final report has been rec'd
ferred to Bureau as soon as rec'd.

Called S. A. S. Mr. Heyer, for info. He stated that no report has been rec'd but that follow up to local inspectors was sent about Apr. 12th. Suggested we call again in few days. Rec. call up 4/20/21.

LWL 4/15/21

File 898 193 atkins

898

I called Justice, Br ~~193~~, re letter said to have been rec'd Mar 17 and was advised that matter would be looked up and letter forwarded or further report made. Was advised that U.S. Att had stated that probably the only way in which case ~~can~~ be reopened will be by appeal in his opinion. Rec. call up April 25.

LWL 4/20/21

L

OK. Call Justice again & try to get them to do something

Br 4/23

r letter to Justice had been referred
rec. that case be reopened. U.S.Att.
se could only be reopened by introduction applica-
ould be difficult to persuade the
Mr. Staley said he will get letter
rmation and should have an early reply.

1/21.

f Wm. H. Davenport. He advised that
and that same would be referred to
to make any comments on same it may

/21.

ecommendation.

21/21.

re cases of U.S. versus schooner
of Hillsboro Bay Lt. #1 and
at no final report has been rec'd
ferred to Bureau as soon as rec'd.

I called S.I.S., Mr. Heyser, for info. He stated that no report has been rec'd but that follow up to local inspectors was sent about Apr. 12th. Suggested we call again in few days. Rec. call up 4/20/21.

LWL 4/15/21

898

FILE 898

Called Mr. Staley, Justice. He stated our letter to Justice had been referred to U. S. Att. at Jacksonville on 10/7/20, with rec. that case be reopened. U.S.Att. ack. receipt on 10/22/20 and stated that the case could only be reopened by ~~application~~ instruction of newly discovered evidence and that it would be difficult to persuade the court to reopen it. No report since that time. Mr. Staley said he will get letter off to him this evening asking for further information and should have an early reply. Rec. call up 3/14/21, if nothing sooner.

McI. 3/1/21.

DC---abob
~~CONT---TSC 3/5~~---OK HBB Mar.5.

Called Justice, Mr. Staley's office, case of Wm. H. Davenport. He advised that they received a letter from U. S. Att. this date and that same would be referred to this office. He stated that the Bureau is free to make any comments on same it may see fit.

LWL 3/17/21.

Conts.
Hold for Justice letter then submit proper recommendation.

H.R.W. 3/21/21.

FILE 898 and 2203.

Saw Mr. Heyser, Steamboat Inspection Service, re cases of U.S. versus schooner Neptune and U.S. versus tug E.F.Coney, destruction of Hillsboro Bay Lt. #1 and Southwest Channel Lt., respectively. He stated that no final report has been rec'd from the local inspectors and that same will be referred to Bureau as soon as rec'd. Recommend call up April 15.

LWL 3/24/21.

OK fix ca
HRW 3/26

I called S.I.S. Mr. Heyser, for info. He stated that no report has been rec'd but that follow up to local inspectors was sent about Apr. 12th. Suggested we call again in few days. Rec. call up 4/20/21.

LWL 4/15/21

898

ADDRESS REPLY
"THE ATTORNEY GEN[illegible]"
AND REFER TO
INITIALS AND NUMBER

J.F.S.

TJS 212223-1

DEPARTMENT OF JUSTICE, CHIEF CLERK
JFS:MFH
WASHINGTON, D.C.

1920 NOV 9 AM 9 [illegible]

17

SOLICITOR

November 5, 1920.

1920 NOV 9 AM 10 53

Received.

LIGHTHOUSES

1920 NOV 10 PM 3 32

The Honorable

The Secretary of Commerce.

Sir:

I have the honor to acknowledge receipt of your letter of November 2, 1920, with enclosures, in reference to the destruction on December 11, 1920 of Hillsboro Bay Light, No. 1, Florida, by the Schooner G. J. BOYCE, in tow of the Tug NEPTUNE.

The matter has been referred to the United States Attorney at Tampa, Florida, who has been instructed to give it the proper attention.

Respectfully,

For the Attorney General,

J. J. Spellacy

Assistant Attorney General.

ER

Bureau of Lighthouses, Washington, D. C.
November 12, 1920.

COPY to Superintendent of Lighthouses, Key West, Fla., for his information and files. You will be further advised.

[illegible]

Acting Commissioner of Lighthouses.

CHIEF CLERK
898
1920 NOV 10 AM 9 21

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

8/11/21 Renew Lo. 7th
11/12/20 Copy Justice let. 11/5 to 7th

November 9, 1920.

LIGHTHOUSES

Memorandum for Commissioner of Lighthouses:

1920 NOV 10 PM 3 32

The attached letter from the Attorney General dated November 5, 1920, relative to destruction of Hillsboro Bay Light No. 1, Florida, by the Schooner G. J. Boyce in tow of the tug Neptune, is herewith referred to the Bureau of Lighthouses for its information and file.

Hydro
Engr. Cons.
Mar. Engr.
Personnel
Accounts.
Contracts.
Chf. Clk.
Dep. Comr.
Comr

E. F. Sweet
Assistant Secretary.
F.G.W.

5019-1-S.

Copy to Cu Bods
McDowell

1920 NOV 10 PM 1 01

13

LIGHTHOUSES 898

8 24/21 wrote 7th

1920 OCT 6 AM 10 58

October 5, 1920.

Sir:

Your attention is invited to the case of the United States v. The Schooner WILLIAM H. DAVENPORT, decided in the United States District Court for the Southern District of Florida, August 18, 1920, and to previous correspondence from this Department relative thereto.

This suit was instituted to recover from the owners of the Schooner William H. Davenport the cost of repairing Hillsboro Bay Light No. 2, Tampa, Fla., which light the government claimed was negligently destroyed by the schooner in question on September 24, 1917.

At the time this case was being heard the government was unable to produce any eye witnesses who were present when the accident occurred or who could testify as to the condition of the weather, condition of the tide, etc., or as to the alleged negligence of the master and pilot who were navigating the schooner when the accident occurred. The government did, however, produce as an expert witness one Captain Bye, whose testimony was directly opposed to the testimony of the master and pilot of the offending schooner.

As will be seen from the decision in this case the court was not disposed to give any great weight to the testimony of the government's expert witness, but the court in its decree remarked that if Captain Bye had been present at the accident his testimony would have great weight in deciding the question whether or not there was any negligence.

Since the court decree in this case the Superintendent of Lighthouses for the Seventh District, Key West, Florida, has been informed that Captain Phil Washington, of Tampa, Florida, was an eye witness to the destruction of the light in question. The Superintendent of Lighthouses communicated with this witness and requested him to answer certain interrogatories relative to the condition of the weather, direction of the wind, condition of the tide, etc., at the time the accident occurred.

After a careful examination of this newly discovered evidence, which is in many respects directly opposed to the testimony of the master and pilot as given at the trial of the case, this Department, particularly in view of the statement of the court as above indicated, is of opinion that it affords ample grounds for retrial of the case.

It is therefore respectfully requested that the United States Attorney for the proper judicial district be instructed to make the neces-

DEPARTMENT OF COMMERCE
WASHINGTON
LIGHTHOUSES
1920 OCT 6 AM 10 58

898

sary application to the court for reopening of the case if this new evidence, in his opinion, justifies such action.

Before concluding, it might be well to call your attention to the following paragraph of a letter of the Bureau of Lighthouses with respect to the difficulty that Bureau is experiencing in replacing aids to navigation which have been lost or destroyed through the carelessness and negligence of navigators:

> "With the limited appropriations of the Lighthouse Service it is becoming increasingly difficult to maintain present aids to navigation and to establish new aids that are being demanded by reason of increase in navigation, and if the appropriations of this Service are also to be called upon to reconstruct or replace aids lost or destroyed through the carelessness and negligence of navigators, as in this case, it will work a hardship upon the Service that should not be necessary if the responsible parties were brought to justice."

The Lighthouse Superintendent at Key West, Florida, will upon request of the United States Attorney afford such assistance in this matter as may be practicable and will furnish such additional information as may be desired.

A complete file of correspondence is herewith inclosed, which contains a decree of the court and the newly discovered evidence referred to above.

Respectfully,

J. W. ALEXANDER

Secretary of Commerce.

The Attorney General,
Department of Justice,
Washington, D. C.

5019-9
Incls.

McI
TWO incs.

Bureau of Lighthouses, Washington, D.C., October 7, 1920.

Copy to Superintendent of Lighthouses, Key West, Fla. See your letters of September 11 and 23, 1920. Herewith are copies of Bureau letters of September 25 and 28, to the Department. You will be further advised upon receipt of information as to the action to be taken.

Acting Commissioner of Lighthouses.

Form 84b

LWL-ER

898

1921 AUG 19 AM 8 29

DEPARTMENT OF COMMERCE
BUREAU OF LIGHTHOUSES
WASHINGTON

August 11, 1921.

8/24/21 Wrote 7th

SUPT. OF LT-HS AUG 16 1921 KEY WEST, FLA.

SUPERINTENDENT OF LIGHTHOUSES, Key West, Fla.

No ~~reply~~ further report has been received ~~to communication~~ (since your indorsement) ~~from this office~~ dated June 25, 1921, on the subject of case U.S. vs. William H. Davenport.

Hydrog.
Mar. Engr.
Personnel
Accounts
Chf. Clk.
Dep. Comm.

E. C. GILLETTE
Acting Commissioner of Lighthouses.

McI
TWO inclosures.

Office of Superintendent, 7th District,
Key West, Fla., August 16, 1921.

Returned to Commissioner of Lighthouses, Washington, D.C. Herewith is letter of August 12, from the U. S. Attorney, Tampa, Fla., and a copy of the order of the Court which accompanied it. In view of the action of the Court in denying a rehearing of this case, it is recommended that an appeal be taken to the Circuit Court of Appeals.

Wm. W. Demeritt
Superintendent of Lighthouses.

Rec Supt
take up along these lines with U.S. attn. Oct 5/20 this Supt. asked Justice to reopen case which is ample request
HRW 8/22

To be prepared in duplicate. Indicate in blank space inclosed in parentheses whether letter, indorsement, etc.

TIMES AND PLACES OF HOLDING COURT.

DISTRICT COURT.
AT TAMPA—Second Monday in February.
AT KEY WEST—First Mondays in May and November.
AT JACKSONVILLE—First Monday in December.
AT OCALA—Third Monday in January.
AT MIAMI—Fourth Monday in April.
AT FERNANDINA—First Monday in April.

Department of Justice.

Office of United States District Attorney,

SOUTHERN DISTRICT OF FLORIDA.

898

SUPT. OF LT-HS
AUG 15 1921
DIGITIZED
1921 AUG 19 AM 8 29

2

Tampa, Fla., August 12, 1921.

Mr. W. W. Demeritt,
Key West, Fla.

In Re:- United States vs. schooner "William H. Davenport".

Dear Sir:-

I herewith enclose copy of order of the court denying the petition for re-hearing in said cause.

Yours truly,

H. Phillips

U.S. Atty.

5