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SENATE

{ REPORT
{ No. 1958

FRANCIS G. McDOUGALL

JULY 22, 1940.—Ordered to be printed

Mr. BURKE, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 719]

The Committee on Claims, to whom was referred the bill (H. R. 719) for the relief of Francis G. McDougall, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 2430, Seventy-sixth Congress, third session, which is appended hereto and made a part of this report.

[H. Rept. No. 2430, 76th Cong., 3d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 719) for the relief of Francis G. McDougall, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof:

“That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$600 as follows: That portion of the sum of \$300 each which may still be unpaid by Francis G. McDougall, of Lowell, Massachusetts, at the time of the approval of this Act, to Louis Guillemette and Ernest Ouellette, both of Lowell, Massachusetts. Said sums shall be accepted by the said Louis Guillemette and Ernest Ouellette in full settlement of all claims against the United States or against Francis G. McDougall as the result of their being struck by a United States mail truck operated by the said Francis G. McDougall in the regular performance of his duties as an employee of the Post Office Department on October 22, 1934. The balance of the \$600 appropriated by this Act shall be paid to Francis G. McDougall in full settlement of his claim against the United States for reimbursement of the amount paid by him in settlement of judgments rendered against him in favor of the said Louis Guillemette and Ernest Ouellette in connection with the accident described: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to

the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The purpose of the proposed legislation is to provide for the payment of \$600 as follows: That portion of the sum of \$300 each which may still be unpaid by Francis G. McDougall, at the time of the approval of this act, to Louis Guillemette and Ernest Ouellette, in full settlement of the claims of Guillemette and Ouellette against the United States or against Francis G. McDougall, as the result of their being struck by a mail truck operated by Francis G. McDougall on October 22, 1934. The bill further provides for the payment of the balance of the \$600 appropriated to Francis G. McDougall in full settlement of his claim against the United States for reimbursement of the amount paid by him in settlement of judgments rendered against him in favor of Guillemette and Ouellette in connection with the accident involved.

STATEMENT OF FACTS

The accident involved occurred in Lowell, Mass., on October 22, 1934. According to the facts as established by the Post Office Department, Louis Guillemette and Ernest Ouellette were crossing a street from east to west at a point about 35 feet from the nearest intersection, and had almost completed crossing the street when a mail truck driven by Francis G. McDougall collided with them. It is also agreed that it was raining at the time of the accident and that visibility was poor. An examination of the mail truck after the accident also disclosed that the windshield wiper on the truck was in good working order.

There is a controversy regarding the speed of the mail truck, the postal chauffeur alleging that he was traveling at a speed of about 15 miles per hour, and one of the claimants alleging that he was traveling at a speed of 25 to 30 miles per hour, while a witness alleges that the speed was from 15 to 18 miles per hour.

The report of the Department establishes that the mail truck had stopped for a red light at a point not over 125 feet from the accident and it is the inspector's view that the truck could hardly have attained a speed of 25 to 30 miles per hour in that short distance.

The claimants placed the responsibility on the part of the Government in that they contend the postal chauffeur should have seen them, inasmuch as they had more than half way crossed the street before the accident occurred. On the other hand, however, the Government contends that the claimants had an unobstructed view of the mail truck and should have seen the lights on the truck if they had been paying proper attention to traffic. The Government further states that the fact that they were jaywalking placed upon them the duty of exercising the highest degree of care and gave the right-of-way to the mail truck. Consequently, the Department disallowed the claims.

However, the claimants subsequently filed suits against Carrier McDougall, and judgments were rendered in favor of the two plaintiffs. The judgments were originally for \$500 each, but the carrier entered into a compromise whereby he undertook to pay \$300 on each judgment, or a total of \$600.

This bill will refund Carrier McDougall the amount which he will have paid off at the time of the approval of this act and will provide for the unpaid balance of \$600 due at the time to Guillemette and Ouellette.

The Post Office Department recommends favorable action on this legislation.

Appended hereto is the report of the Post Office Department, together with other pertinent evidence.

POST OFFICE DEPARTMENT,
Washington, D. C., May 21, 1938.

HON. AMBROSE J. KENNEDY,
Chairman, Committee on Claims,
House of Representatives.

MY DEAR AMBROSE: Reference is made to your letter of May 16, requesting a report on H. R. 10587 for the relief of Francis G. McDougall in the sum of \$600 to reimburse him in the amount paid in settlement of judgments rendered against him in favor of Louis Guillemette and Ernest Ouellette, of Lowell, Mass., who were injured in an accident involving a mail truck operated by Carrier McDougall on October 22, 1934.

After a careful consideration of this accident the Department disallowed claims presented by Messrs. Guillemette and Ouellette under the provisions of 5 U. S. C. 392, on the ground that the evidence did not establish the responsibility of the Government. There is enclosed a copy of the memorandum prepared in

the Department at the time the claims were disallowed. Subsequently the claimants filed suits against Carrier McDougall and all of the evidence in the case was transmitted to the Department of Justice with request that counsel be assigned to defend the carrier.

When these cases were tried, judgments were rendered in favor of the two plaintiffs. The carrier entered into a compromise whereby he undertook to pay \$300 on each judgment, or a total of \$600.

Since it was the Department's view that the carrier was without fault, notwithstanding which fact a local jury gave judgment against him, it is my opinion that the carrier should be relieved of financial responsibility for the amount of these debts. Favorable action is accordingly recommended on the pending bill.

If your committee finds it necessary to examine the original evidence in the case, no doubt same can be obtained direct from the Attorney General who has not yet restored these files to this Department. A similar report is being made to the Committee on Claims of the United States Senate which has under consideration S. 4006, an identical bill for the relief of Mr. McDougall.

Very truly yours,

JAMES A. FARLEY, *Postmaster General.*

BRIEF RE ERNEST OUELLETTE, 11 GARNET STREET, LOWELL, MASS. (1812), AND
LOUIS P. GUILMETTE, 44 WARE STREET, LOWELL, MASS. (1813)

Facts: This accident occurred in Lowell, Mass., on October 22, 1934. Involved therein was a United States mail truck. The claimants sustained injuries.

Analysis: The facts in this case with the exception of the speed of the mail truck are not disputed. It is agreed by all parties involved, including an apparently disinterested witness, that the claimants were crossing the street from east to west at a point about 35 feet from the nearest intersection and had almost completed crossing the street when the mail truck which was south-bound collided with them. It is also agreed that it was raining at the time of the accident and that visibility was poor. An examination of the mail truck after the accident also disclosed that the windshield wiper on the truck was in good working order.

With reference to the speed of the mail truck the postal chauffeur alleges that he was traveling at a speed of about 15 miles an hour. The witness places a speed of from 15 to 18 miles an hour to the mail truck and claimant Ouellette estimated the speed of the mail truck at from 25 to 30 miles an hour. The other claimant failed to state the speed of the mail truck. The inspector reported that the mail truck had stopped for a red light at a point not over 125 feet from the accident and I concur in the inspector's view that the mail truck could hardly have attained a speed of 25 to 30 miles an hour in that short distance. The claimants seem to feel that the Government is responsible for the reason that the postal chauffeur should have seen them inasmuch as they had more than halfway crossed the street before the accident occurred. The claimants, however, had an unobstructed view of the mail truck and should have seen the lights on the truck if they had been paying proper attention to traffic. The fact that they were jaywalking placed upon them the duty of exercising the highest degree of care and gave the right-of-way to the mail truck.

Conclusion: The evidence in this case warrants the conclusion that the claimants have failed to establish that responsibility rests with the Government and the disallowance of these claims is accordingly recommended.

COUNTY OF MIDDLESEX,
State of Massachusetts, ss:

Francis G. McDougall, being duly sworn, makes the following statement:
I am a substitute city carrier at the post office at Lowell, Mass.

On the night of October 22, 1934, I was engaged in making evening collections and was using Government-owned mail truck No. 11245. At about 9:55 p. m., I was proceeding in a southerly direction along Gorham Street; I had passed the traffic light at the intersection of Middlesex and Gorham Streets, and had proceeded south from that point about 30 feet when two pedestrians loomed in front of my truck. Both were struck by the truck. It was raining hard, but the windshield wiper in my truck was working properly. Visibility was very poor on account of the rain. I had the door on the driver's side of the truck open. These two persons did not leave the sidewalk at an intersection of the two streets and they did not walk directly across the street at right angles to the curb; I am of the opinion that they cut across the street on a diagonal line traveling about southwesterly.

This made it impossible for me to see them until they were quite near the truck. As I recall, they both wore dark clothing. As I recall also, some of the street lights in this immediate vicinity were extinguished.

These persons were Ernest Ouellette, 11 Garnet Street, Lowell, Mass., and Louis P. Guillemette, 44 Ware Street, Lowell, Mass.; both young men. Guillemette was struck by the front of the car, about the middle, and knocked down but hung on to the front bumper and carried 15 or 20 feet. Ouellette was struck by the right front fender and thrown to the right on the westerly sidewalk. I took Guillemette to the St. John's Hospital and waited until he was examined by the doctors there. It was reported that there were no bones fractured but that it was deemed advisable to keep him there for the remainder of the night for observation. However, his parents removed him to his home that night and he was taken to the St. Joseph's Hospital the following morning.

Ernest Ouellette was picked up by occupants of another car and taken to the St. John's Hospital, where he remained several days. I learned before I left the hospital that he had suffered lacerations of the scalp.

I believed that these persons were responsible for the injuries which they suffered, due to the fact that they crossed a street at a point not an intersection, that they were not visible to me until it was too late to avoid seeing them and striking them and I also believe that although it was raining that if they had looked before they crossed the street that they could have seen the mail truck approaching. I was unable to avoid striking them because I could not see them in time to avoid it, therefore, I do not think that I was to blame for their injuries.

FRANCIS G. McDOUGALL.

Sworn and subscribed to before me this 26th day of December 1934.

O. R. HORNE.

637 BROADWAY, LOWELL, MASS.,
February 1, 1940.

Hon. EDITH NOURSE ROGERS,
Member of Congress, Washington, D. C.

MY DEAR MRS. ROGERS: You will recall that on May 9, 1938, you introduced a bill (H. R. 10587) to reimburse me for money paid in settlement of a damage suit as a result of an accident in which I was involved while driving a mail truck. Congress adjourned before much action could be taken on this bill. On January 3, 1939, you again introduced this bill for me.

You will also recall that the original amount of the settlement against me was \$1,016. Upon receipt of \$100 and a promise to pay \$500 more in 30 days, the plaintiffs' lawyers agreed to a settlement of \$600. This was the amount of the bill introduced in Congress. I was unable to pay the remainder, as stipulated and now the plaintiffs are after me for the full amount. I am enclosing a letter recently received from one of the lawyers which tends to reveal their frame of mind. I think the only course left open for me now is to offer them a certain amount each week.

Hoping to hear from you soon, I remain

Respectfully yours,

FRANCIS G. McDOUGALL.

637 BROADWAY, LOWELL, MASS.,
February 21, 1940.

Hon. EDITH NOURSE ROGERS,
House of Representatives, Washington, D. C.

MY DEAR MRS. ROGERS: Concerning your letter of February 15, 1940, I wish to thank you for your interest in me and I want you to know that I am very grateful.

Regarding the information that the Claims Committee seeks, I wish to refer you to my letter of May 6, 1939, in which I stated that I went to the local courthouse where I was informed that there were no stenographic notes taken at the trial and the judge entered a finding for the plaintiff in each case of \$500.

I am enclosing an affidavit of Attorney A. L. Bourgeois who has actual knowledge of the facts of the case.

I also went to Boston and conferred with Attorney Alfred Malagodi, who defended me. He told me at that time that he had sent his complete record of the case, together with the certified copies of the execution to the Attorney General's

office in Washington. This report is in charge of Samuel E. Whitaker, Assistant Attorney General in the Department of Justice.

You will recall that in a letter of April 5, 1939, I also had sent you certified copies of the executions which were rendered against me.

Regarding money paid by me in the judgments, I sent signed receipts to show that I had paid \$100 to Mr. Jones, postal solicitor, in the Post Office Building at Washington.

Inspector Olan Horne's very complete report on the case is also on file with the Post Office Department in Washington under case No. 77464-D and I am sure it is available to the Claims Committee.

At present I am paying one of the plaintiff's lawyers \$5 per week. I shall send receipts for these payments if you think it necessary.

If more information is required, kindly let me know what is wanted and I shall endeavor to secure it.

Again I wish to thank you for your efforts on my behalf and I remain

Respectfully yours,

FRANCIS G. McDOUGALL.

AFFIDAVIT

LOWELL, February 20, 1940.

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

I, Albert L. Bourgeois, being first duly sworn under oath, do depose and say, that I am an attorney and counselor at law at Lowell with offices at 521-523 Chalifoux Building, Lowell, Mass., being a graduate of Holy Cross College and Harvard Law School and having been in the active practice of my profession for 15 years; that I represented one Louis P. Guilmette who was injured by a mail truck driven by one Francis J. McDougall of Lowell; another person Ernest Ouellette of Lowell was also injured at the same time and was represented by Meyer Lipchitz, Esq., of Lowell.

After dealing with several United States attorneys from the United States attorney's office at Boston, the case was tried before Judge Arthur L. Eno of the District Court of Lowell. Assistant United States Attorney Malagodi tried for the Government. The case was tried both as to liability and as to damages including medical bills, etc. The court found for the plaintiff in each case in the sum of \$500 and executions were taken out in each case against Mr. McDougall which executions are now outstanding, he having paid but a small amount on each. It was brought out in evidence that at the time of the accident Mr. McDougall was actually in the employ of the United States Post Office Department, operating a mail truck.

ALBERT L. BOURGEOIS.

LOWELL, February 20, 1940.

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

Then personally appeared before me the above named Albert L. Bourgeois and made oath that the foregoing instrument is true to the best of his knowledge and belief.

RAYMOND B. BOURGEOIS,
Justice of the Peace.

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