

TORONTO ADMIRALTY DISTRICT  
 STEAMER *HAMONIC* AND OWNERS }  
 CANADA STEAMSHIP LINES, LIM- } PLAINTIFFS;  
 ITED ..... }

1923  
 May 12.

AGAINST  
 THE SHIP *ROBERT L. FRYER*

*Shipping—Collision—Breach of Rules—Onus of Proof—Speed, Handiness, Equipment and assistance a factor—Turning in a narrow channel—Right of way.*

*Held*, that the right of way given to a vessel by virtue of Rule 25 of the Rules of the Road for the Great Lakes adopted by Order in Council of the 4th February, 1916, does not absolve a vessel from neglect to observe other rules governing the situation created by the circumstances surrounding the operation.

2. In a case of collision the condition of the vessels as to equipment, handiness, speed and assistance rendered by tugs should be taken into consideration in determining the responsibility of each vessel, especially when such conditions are known to the Masters of the vessels colliding.

ACTION brought by the plaintiffs against the Ship *Robert L. Fryer* for collision (1).

May 10 and 11, 1923.

Case now heard before the Honourable Mr. Justice Hodgins, L.J.A. at Port Arthur.

*W. F. Langworthy K.C.* and *F. W. Wilkinson* for plaintiffs.

*W. A. Dowler* for defendant.

The facts of the case are stated in the reasons for judgment.

HODGINS, L.J.A. now (May 12, 1923) delivered judgment.

This action is brought by the steamer *Hamonic* for \$5,000 damages sustained, it is alleged, by collision between that vessel and the steamer *Robert L. Fryer* in the Kaminstiquia River, which is part of the harbour of Fort William.

The *Hamonic* is a steel vessel of 5,269 tons register, 350 feet long and 52 feet beam.

The *Fryer* is a wooden vessel built in 1888 and used for transferring grain between elevators and is 280 feet long.

The *Hamonic* on the day of the accident, September 9, 1922, was taking on a cargo at the flour house of Ogilvie's

(1) REPORTER'S NOTE: An appeal herein has been taken to the Exchequer Court.

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elevator on the west bank of the Kaministiquia River and was intending to leave that elevator and proceed to Port Arthur.

The *Fryer* had come into the Kaministiquia River—I believe from Port Arthur—and was intending to make her way up to the same dock until, at the office near the city Sub-Way, her instructions were changed and she was directed to another dock in the river.

The time when the accident occurred was some time shortly after 11 o'clock in the forenoon that day.

The Kaministiquia River is 480 feet wide just below its junction with the McKellar River, and from a line across the mouth of the McKellar River to the C.P.R. bridge further up that river, is 850 feet. The width across the mouth of the McKellar River at the junction of its banks with the Kaministiquia is 820 feet.

The question is was the *Fryer* to blame for the accident, because the action is against her, and it is now admitted that she suffered no damage and her counter-claim will therefore on that head be dismissed.

If she is not to blame it is perhaps unnecessary to go fully into whether the *Hamonic* is to blame, because a finding that the *Fryer* was not to blame would practically end the case.

The questions in the case are rather puzzling ones, owing to the fact that the *Hamonic* was required by regulations to turn before descending the Kaministiquia River from the point where she was lying.

The *Fryer* was proceeding at half speed up the Kaministiquia and stopped at point "D" on Exhibit 1 some distance below the C.P.R. Dock No. 5, when her master saw the jack-knife bridge on the Kaministiquia River up beyond Ogilvie's dock being raised, which indicated a descending vessel.

The *Fryer's* distance below the Ogilvie dock would then be about 2,500 feet. I take this figure and others from the blueprint Exhibit 2.

Owing to a wind, which the master of the *Fryer* describes as "fresh" and which was drifting her in towards the easterly bank of the Kaministiquia he began to proceed at half speed, which he says is three miles an hour, to

straighten up. He then noticed the *Hamonic* leaving the lower end of the Ogilvie elevator and apparently coming astern. This was at a distance from him of about 2,000 feet. He then stopped his engine, having gone 75 to 100 feet and being off the C.P.R. shed.

He heard no signal from the *Hamonic*.

Under Rule 27 the *Fryer* should then have signalled with one long blast, and so should the *Hamonic*, when her master saw the *Fryer* as he did, at the centre of the C.P.R. elevator marked "A" on Exhibit 1. This would be below point "D" in Exhibit 1 and therefore more than 2,500 feet away.

I cannot find on the evidence that this signal was given by the *Hamonic*. The onus is on her to establish that it was given, and there is no positive evidence that it was done, although one long blast was heard by a witness, who, however, cannot definitely connect it with the *Hamonic*.

The *Fryer* does not pretend to have sounded one.

Both ships therefore broke the first part of Rule 27 and I must consider whether this neglect on the part of the *Fryer* caused or contributed to the accident. The descending vessel, the *Hamonic* had the right of way under Rule 25—for that there is a current in the Kaministiquia River is proved by Mr. Harcourt and by Hogue and possibly one other,—although the current is slight—but this right of way does not absolve that vessel from neglect of the observance of Rule 27.

Nor did she give the passing signal required by Rule 25. This left the *Fryer* to make the signal, if she decided to pass up, but apparently her master, either assuming that the *Hamonic* would turn or that she would go back to the dock, did not do so. She continued to straighten up as the wind was forcing her to the east side of the river. During this operation her master noticed the *Hamonic* coming rapidly down the river stern foremost and he then knew that she must turn at the McKellar basin. He gave one signal for full speed astern and continued to go astern.

The alarm signal given by the *Hamonic* about that time was followed by two short blasts intended for the tug but the master of the *Fryer* thinking they were for him, and

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indicated that he should back up, answered them and continued to go astern and the vessels approaching each other collided.

The effect of the breach of the Rule 27 by the *Fryer* has given me some anxiety.

Rule 27 is intended for warning and Rule 25 for information of direction.

As the *Hamonic* was aware of the presence of the *Fryer* and the *Fryer* of the *Hamonic* at the time I have stated, the effect of the breach of the first part of Rule 27 becomes of little importance as they then were in a position governed by the passing Rule under the latter part of Rule 27.

These passing Rules direct that either vessel may give the signal electing the side.

Considering that the *Hamonic* was bound by regulation to turn before passing the *Fryer* it is difficult to apply the Rules. When the *Hamonic* had completed the turn she might be in such a position as to require to pass the *Fryer* port to port or starboard to starboard, depending on how far she had been thrust back into the McKellar River basin, and how quickly she could turn; and she would also have to regard the presence of the *Keewatin* lying at the C.P.R. Dock No. 5. Whether she would make a sharp or wide turn was for her to decide, and she could accomplish whichever she wished with the aid of her own power and the tug. She was descending the river, and according to much of the evidence her stern appears to have got so close to the east bank of the river as to preclude the *Fryer* from slipping through there.

The *Hamonic* might, I think, have stopped her way or backed up earlier or gone further into the basin, but instead of this she came on without completing her turn or getting her bow down the stream until the time of collision.

Till she made the turn, so as to leave room either astern or beyond her bow, the *Fryer* could not, as it seems to me, safely decide on her course. She was in a position of embarrassment until then and she was on the east side of the channel and could not go across the bow of the *Hamonic* until that vessel had straightened up enough to indicate that she would not edge in further towards the west bank.

I agree with the evidence which deprecates any effort, under the circumstances, to cross the bow of the *Hamonic*.

I have come to the conclusion that a signal from the *Fryer* might well have confused the *Hamonic* if given when she was just about to turn, especially if the election was to keep to the port side of the Kaministiquia, which would embarrass the usual turning movement and prevent her from being shoved far enough into the McKellar basin; and I am not convinced that if the *Fryer* had selected the other side, it would not have been equally dangerous to the *Hamonic* as well as to her herself.

It is, of course, more difficult for another and modern vessel to have to deal with a wooden vessel such as the *Fryer* is—35 years old—which cannot stop herself in less than 800 feet even going three miles an hour and which has not sufficient power to prevent her being drifted by the wind. The only safe course seems to be to keep out of her way when she appears in the river. But as she is well known here and her disabilities pretty well understood, all the more caution is demanded from a vessel which sees that her presence is or may be a factor in deciding what is to be done, especially when the vessel is as well equipped as the *Hamonic* to turn or stop quickly, while so large as almost to block the river when broadside to it.

The *Fryer*, of course, might have hugged the west side of the river or made fast to the C.P.R. dock had she been warned by the whistle of the *Hamonic* on casting off from the Ogilvie dock under the first part of Rule 27, or had she seen that vessel sooner. But having regard to the circumstances, I am unable to see wherein the *Fryer* was to blame for the actual collision, however much her lumbering gait and apparent sluggishness may have complicated a difficult situation.

I must therefore acquit her and dismiss the action against her.

It is perhaps unnecessary to consider and decide whether the *Hamonic* was at fault other than in the ways I have indicated, but in case the action goes further, I may say, that my conclusion from the evidence is that she was allowed, in view of the presence of the *Fryer* to come down too close to the lower side of the basin before getting her

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bow pointing in a down stream direction, and either in not earlier stopping her downward drift or in not forging ahead and making a quicker turn so as to avoid the *Fryer*. She had, according to various witnesses, from 125 to 300 feet of room ahead of her and is a powerful and speedy vessel, aided by a competent tug.

It seems that the *Fryer* received no damage but just rebounded from the side of the *Hamonic*, so that very little effort, on the part of the *Hamonic* would, as it seems to me, have avoided her altogether.

The result is that the action is dismissed and the counter-claim as well, as endorsed on the record, as follows:

The action will be dismissed with costs except the costs and expenses consequent on the seizure and possession of the *Fryer*, which are to be made the subject of a special application to me by either of the parties. Counter-claim dismissed with costs so far as they are attributable to the counter-claim to be set off.

*Judgment accordingly.*

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