

1924
April 8.

ON APPEAL FROM THE TORONTO ADMIRALTY DISTRICT

THE STEAMER *HAMONIC* AND } APPELLANTS;
 OWNERS (PLAINTIFFS) }

AND

THE SHIP *ROBERT L. FRYER* } RESPONDENT.
 (DEFENDANT) }

Shipping—Collision—Harbour—Narrow channels—Negligence—Regulations.

The *H.* was in dock on the west bank of the *K.* river intending later to proceed down river to Port Arthur, when the *F.* entered the *K.* river from Port Arthur intending to lay at the same dock, which instructions were changed. The channel is 450 feet average in width from this dock to the point of collision, a distance of about 2,000 feet. The *McK.* river joins the *K.* on its easterly bank, nearly 1,900 feet below the dock, which river is 820 feet at its mouth, gradually narrowing up to the railway bridge over the same, 850 feet up stream, constituting the *McK.* basin, which under the harbour regulations was a turning basin, turning in channel for such ships being forbidden. The *H.* proceeded down stream stern foremost to the basin, assisted by a tug, lashed to her port bow, there to turn and go down stream whilst the *F.* was coming up on her starboard side of channel at 3 miles an hour. When about 2,800 feet away the *F.* saw the *H.* leaving her dock. A westerly wind was blowing, and the *F.* straightened up from time to time to keep steerage way. When the *H.* had put her stern into the *M.* river, and lay across the *K.* close to the lower bank of the *M.*, about to turn, but without indication of whether to port or starboard, both ships were close together, and a collision was imminent. The *H.* then gave a danger signal and when 75 feet away gave a two-blast signal, for the tug. The *F.*'s engines were put astern, and the *H.* influenced by wind and tide was not well under command, and the ships collided.

Held (varying the judgment appealed from), that the *H.* going astern in such manner as to occupy considerable space of the stream, with better knowledge than the other ship of the probable degree of success with which her turning movement was being executed, and knowing the degree of command under which she was, and with knowledge of the up-going ship, should have used the danger signal in ample time and with such frequency as the situation and prudence would indicate and not wait until the collision was imminent or inevitable, and that she was not navigated with proper regard to the other ship; but that the *F.* was also navigated in an unseamanlike manner and without regard to the *H.*, that she should have held the starboard side of the river, should not have been so near the *H.* at her turn, and both ships were to blame.

2. That regulations are not merely made for the purpose of preventing collisions, but also to prevent a risk of collision.
3. That the *F.* was not entitled to any consideration by reason of the structural peculiarities she possessed, rendering it difficult to exercise due and prompt command over her. Her captain knowing her peculiarities should have used corresponding care. That one ship should not be expected to know the navigating disabilities of another and base her own conduct thereon.

Judicial observation. The absence of specific regulations in the way of signals applicable to turning ships in narrow channels, which exist elsewhere, noticed and commented upon.

APPEAL from the judgment of the Local Judge in Admiralty of the Toronto Admiralty District (1) which dismissed the action of the appellants herein.

January 31, 1924.

Appeal now heard before the Honourable the President.

R. I. Towers, K.C. for appellants;

The owner of the Robert L. Fryer in person.

The facts are stated in the reasons for judgment.

THE PRESIDENT, this 8th day of April, 1924, delivered judgment.

This is an appeal from a decision of Honourable Mr. Justice Hodgins, Local Judge in Admiralty for the Toronto Admiralty District, rendered in an action for damages by collision brought by the steamship *Hamonic* and owners, against the steamship *Robert L. Fryer*, the collision occurring in the Kaministiquia river, a part of the harbour of Fort William. The steamship *Hamonic* was found wholly to blame by the trial judge and the action brought by that ship and her owners was accordingly dismissed.

The appeal was heard by me with two nautical assessors, Capt. L. A. Demers, Wrecks Commissioner, and Capt. L. G. Dixon, Marine Superintendent of the Department of Marine and Fisheries.

On the day of the collision, September 9, 1922, the *Hamonic*, a passenger and freight steamer of over 5,000 tons and 350 feet in length, was taking on cargo at the Ogilvie Milling Company dock on the west bank of the Kaministiquia river, with the intention of proceeding down the river, after loading, to Port Arthur. The *Fryer* entered the Kaministiquia river from Port Arthur with the intention of proceeding up the river and lying at the same dock, but her instructions being subsequently changed, she was directed to another dock in the river.

The Kaministiquia river is a narrow channel of about 450 feet in average width, from the Ogilvie Milling Company dock down the river to the point of collision, its gen-

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eral direction being north and south. The distance in length between these two points would roughly be about 2,000 feet.

The McKellar river joins the Kaministiquia river on the easterly bank of the latter river, and down the river from the Ogilvie Milling Company dock about or nearly 1,900 feet, that is to the centre line of the McKellar river. The width of the McKellar at its junction with the Kaministiquia is about 820 feet and it gradually narrows from its mouth upwards, to a railway bridge crossing the same, the distance from this bridge to the confluence of both rivers being about 850 feet. The water area between the mouth of the McKellar river and this railway bridge constitutes what is known as the McKellar Basin. The width of the Kaministiquia river immediately below its junction with the McKellar is about 480 feet.

On the occasion in question the *Hamonic* lay at her dock with bow upstream and on her departure down the river was of course obliged soon to turn. Regulations applicable to the harbour of Fort William prohibit ships exceeding 200 tons gross from turning in the channel of the Kaministiquia except at designated turning basins provided for that purpose. The natural turning basin for the *Hamonic* on this occasion was the McKellar Basin, at least that was the one selected. The *Hamonic* accordingly proceeded down stream, with the assistance of a tug boat made fast to her port bow, stern foremost, to the McKellar turning basin with the view of there turning and proceeding on her voyage down the river.

As the *Hamonic* was going down stream, the *Fryer* was proceeding up stream, on her starboard side of the channel, being the westerly side of the river, at the rate of three miles an hour according to her captain, whether over the ground or through the water does not appear from the evidence. So far as one can gather from the evidence, it was at a distance of about 2,800 feet, the *Fryer* first saw the *Hamonic* leave the lower end of the Ogilvie dock. A westerly wind was forcing the *Fryer* towards the easterly bank, below the turning basin, and she continued to straighten up from time to time to keep steerage way. The stage was soon reached when the *Hamonic* had put her

stern into the McKellar a short distance, and lay across the Kaministiquia river, and close to the lower bank of the McKellar, about to make her turn complete but without any indication whether to port or starboard. Both ships were then close together, and each slightly under way, and a collision was imminent. The *Hamonic* gave a danger signal, and a further signal of two blasts was also given when within 75 feet of the *Fryer*, intended for the tugboat to reverse her engines in order to stop the way of the *Hamonic*. The *Fryer's* engine was put astern but very probably did not quickly gather sternway, and the *Hamonic*, influenced by wind and tide, was not apparently well under command, and a collision occurred.

The trial judge found that the *Hamonic* failed to give the signal required by number 27 of the Rules of the Road for the Great Lakes, and the *Fryer* as well, but that as each steamer was aware of the presence of the other when at a considerable distance apart, this rule became of little importance. He was of the opinion that the *Hamonic* might have stopped her downward course earlier and backed up or gone further into the basin, and that she came down too close to the lower bank of the turning basin, without completing her turn or getting her bow down stream; or that she should have forged ahead and made a quicker turn so as to avoid the *Fryer*, a course the wisdom of which might well be doubted. He also adopted the view of witnesses deprecating any effort on the part of the *Fryer* to cross on her starboard side the bow of the *Hamonic*, and found that the *Hamonic* was alone to blame for the collision.

The case being one of collision in a narrow river or channel presents as is usual, many difficulties. The case is further rendered difficult by reason of the fact that the *Hamonic* was obliged to turn in the river, at or in a turning basin designated for such purposes, and the turning operations of a large ship in such circumstances cannot always be controlled to a nicety by the turning ship nor predicated with exactness by an approaching ship. Unfortunately, the rules of the road for the Great Lakes do not prescribe specific regulations in the way of signals applicable to turning ships in narrow channels, as prevail

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in many places elsewhere in similar waters, rendering it difficult to determine which of existing rules are applicable in the circumstances, or the degree, if any, in which any of them may be applied. I think the whole issue involved relates to the conduct of a turning ship in a narrow channel and an approaching ship.

I agree with the finding of the trial judge to the extent that the *Hamonic* was at least in fault and contributed to the collision, and his judgment in this respect should stand. This also is the opinion of my assessors. I do not think that the navigation of the *Hamonic* from the time of leaving her dock until the moment of the collision was carried out with due regard to the rights of the up-coming ship, the *Fryer*.

The *Hamonic* was bound in the circumstances to proceed astern down the river to the prescribed turning basin. I think the evidence supports the view that in her course to the turning basin she was more or less athwart the stream, and probably causing the *Fryer* to conclude at an early stage that it was inadvisable to contemplate the idea of continuing her course up the river on her starboard side, whilst the *Hamonic* was proceeding in this fashion towards the basin. My assessors advise me that it would have been wrong for the *Fryer* to have attempted this, and in that I concur. This was also the view of the trial judge.

The presence of the *Fryer* was known to the *Hamonic*, and the latter must have been cognizant of the fact that she was occupying a considerable space of the river channel. A ship proceeding down a narrow channel obliquely to or athwart the stream, as in this case, must produce a situation of embarrassment for an approaching ship awaiting the turning event, and as well a situation involving a possible risk of collision.

I am of the opinion that a ship such as the *Hamonic* in this case, going astern about two thousand feet, and in such a manner as to occupy a considerable space of the stream, with better knowledge than the other ship of the probable degree of success and precision with which her turning movement was being executed, or likely to be consummated, and knowing the degree of command which she was under, and with the knowledge that the up-going ship was

awaiting the turning event, should use the danger signal in ample time, and with such frequency as the situation and prudence would dictate, and not postpone the same until the collision is imminent or inevitable. Regulations are not merely made for the purpose of preventing a collision, but also to prevent the risk of a collision. They apply at a time when there is a probability of collision or when risk of collision can be avoided. The use of the danger signal long before it was used by the *Hamonic* was I think imperative.

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Further as the trial judge concluded, the *Hamonic*, a powerful boat with the aid of a tug, was allowed to come down too close to the lower side of the basin before getting her bow in a down stream direction, and in not earlier stopping her downward movement and going further into the basin, was in fault, and no satisfactory explanation of her failure to do so has been made. The turning manœuvre of the *Hamonic* was not in my judgment properly executed or with proper regard of the rights of the *Fryer*, and this is also the opinion of my assessors.

The question of the liability of the *Fryer* is not quite so easy of determination, but my assessors are of the opinion that the *Fryer* contributed to the collision and is also blamable and in that view I concur. The trial judge himself evidently entertained some doubt in respect of his finding as to the liability of the *Fryer*, and I am respectfully obliged to differ from his conclusion thereon.

While it is true that a ship intending to turn in a narrow channel should approach her turning basin and execute her turn with reasonable care and with regard to other traffic passing up and down the river, still she is entitled to turn, and traffic up and down the channel must exercise reasonable care with regard to her, because such traffic has to deal with a turning ship in a narrow channel. They must act with proper regard for the safety of each other. I do not think that the *Hamonic* was handled with due regard to the safety of the *Fryer* and I am also of the opinion that the *Fryer* is blamable for the same reason.

I think the starboard side of the river was the proper one for the *Fryer* to hold, both under the regulations and in the exercise of prudent seamanship. Until a situation de-

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veloped justifying a departure from the starboard side of the river, the *Fryer* should have held to her starboard side of the channel. Had the *Fryer* kept such a position she would have been able to await with safety the turning of the *Hamonic*, and later might have pursued her starboard course, or if events required it, proceeded to port. Further, she would have been under better control in that she would have been less exposed to the influence of the wind which prevailed on this occasion. The *Fryer* was on the starboard side of the river when she first sighted the *Hamonic* but afterwards went to the port side of mid-channel or close to it, evidently with the intention of passing under the stern of the *Hamonic* when she made her turn. She permitted herself to get too far to port to properly manoeuvre in the crisis of the situation that developed.

My assessors are of the view, and in that view I agree, that the *Fryer* should have much earlier gone astern when she saw that the *Hamonic* was not backing further into the basin and was athwart the river just prior to turning. It was close to the crucial moment of the turning of the *Hamonic* that the *Fryer* was found too close to the former ship. What the *Fryer* should have done prior to the turning is one thing; what she should have done just when the *Hamonic* was about to complete her turn is another thing. The *Fryer* then knew that the *Hamonic* was not a ship intending to return, but a ship just about to turn or actually turning which is quite a different thing. She should not have been in such close proximity to the *Hamonic* at her turn and should much earlier have gone astern. This I think she could have done. I am of the opinion that the *Hamonic* and *Fryer* are both to blame for the collision.

I do not think the *Fryer* is entitled to any consideration by reason of the fact that she possesses structural peculiarities or other seagoing qualities, which rendered it difficult to exercise due and prompt command over her in her navigation, as suggested by the trial judge. The captain of the *Fryer* knew her peculiarities better than any one else, and, because of this knowledge, corresponding care was required on his part. I do not think that one ship should be expected to know the navigating disabilities of another ship and thereon base her own conduct, and, even if she did,

the ultimate welfare of each will best be conserved by the observance of the regulations and practices which experience and good seamanship have established for the guidance of each.

Therefore I very respectfully am of the opinion that both ships are to blame. The appellant should have his costs of the appeal and there should be no costs to either party on trial.

The case will be remitted to the court of first instance to be there dealt with as the rights of the parties under this judgment may appear to the said court.

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