

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

1923
 May 10.

AGAINST

THE SHIP *ROBERT L. FRYER*.

Shipping—Collision—Observance of Rules—Negligence of both vessels.
Held, that rules 27, 37 and 38 of the Rules of the Road for the Great Lakes adopted by Order in Council of February, 1916, apply to a case where vessels are working in and out of a narrow congested channel into a slip between docks or while within the water space between docks. These rules apply to vessels until they are clear of the slip and the dock next to which they were made fast.

2. When both colliding vessels are found equally blameable and damage results, each vessel is liable to pay one-half the damage sustained by the other.

ACTION by the plaintiffs against the ship *Robert L. Fryer* for damages caused by a collision (1).

May 7, 8, and 9, 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, K.C. for defendant.

The facts are stated in the reasons for judgment.

HODGINS, L.J.A. now (May 10, 1923) delivered judgment.

This action is brought by the owners of the ship *Westmount* and against the ship *Robert L. Fryer*, claiming damages by reason of a collision which occurred in the slip between the Davidson & Smith Elevator and the Government dock at Port Arthur.

The *Westmount* is a steel vessel of 7,392 tons and had in her at that time about 100,000 bushels of grain which she had just taken from the Davidson & Smith Elevator finishing there at 5.40 p.m. on the 17th of November, 1922.

The *Fryer* is a wooden ship 280 feet long and drawing 16 to 18 feet at that time, laden with from 55,000 to 60,000 bushels of grain.

The slip in which the collision occurred is a comparatively narrow one, 175 feet in width, narrowed at the entrance, by reason of the wreck of the SS. *Ritchie* lying

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

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there on the side of the Davidson & Smith Elevator dock, to about 155 feet. Beyond the wreck, in shore and on the same side of it, was a steamer, called the *Jedd*. She had been laid up and, when I saw it, was on the bottom.

The channel into the slip reaches out a little distance beyond the end of both these docks. On the south side, shallow water all along for about 1,000 feet; on the north, shallow water extends for about 200 feet out from the end of the Government dock. To the north there is a depth of some 23 feet.

The distance from the breakwater to the Government dock is said by the engineer, Mr. Harcourt, to be about 2,400 feet.

In the channel, or rather in the slip, at the time of the accident there was lying a vessel called the *F. B. Squires* moored some 450 feet in shore from the end of the Government dock.

In company with counsel for both parties and with their consent I visited the two docks between which the accident occurred.

The *Westmount* began to cast off and to get her stern out across the slip so as to work it backwards along the Government dock. She did not signal before starting and her lights were not lit, which, as is contended, indicated that she was not intending to move, or, perhaps, more accurately stated, that not having lit her lights the conclusion was that she did not purpose moving that evening. The officer on her saw the *Fryer* beyond the breakwater and the mate of the *Westmount* also said that he saw her when she was half way in between the breakwater and the dock, or, as he put it later on, some two or three hundred feet away.

The *Fryer* was coming in from Fort William to the Government dock and she did not signal either until a later period, which her captain gives as from a position about 100 to 125 feet outside of the end of the Government dock. She had seen the *Westmount* and the *Squire* for a considerable distance and came on in the channel.

Both these vessels contemplated some definite thing. The *Westmount* to work out along the Government dock and the *Fryer* to tie up at the same dock until he had discovered the intentions of the other two ships. This is

stated in the Preliminary Act filed on behalf of the *Fryer* and the master of that vessel agreed in its correctness.

In working in and out of such a narrow, congested channel it was incumbent on both ships to use caution and it is well to let it be known that Rule 27 in my judgment applies to such a case as well as Rule 37 and 38.

The grain-carrying vessels are sometimes in a hurry, as has been stated in evidence, and their intended manoeuvres cannot be divined by those approaching or even by those inside the slip itself, and so the rule applies not only to docks open to the fairway but to those which lie on each side of the slip where care is even more necessary. The rule covers the ships until they are clear of the slip and the dock next to which they were made fast.

In this case I think the *Westmount* was at fault in neglecting the rule and not giving the signal when moving from its dock or just before doing so and thus, in that way, contributing to the accident.

And I think the *Fryer* is equally to blame in this respect. She was the approaching ship and should have signalled one long blast, which would have indicated her intention to enter the slip. It is true that her captain says that he saw the *Westmount* taking in grain when he looked at her from the breakwater. I think he is wrong in this. But if he is right he must have been aware of the probable sudden movements of grain carriers and should have governed himself accordingly.

The *Fryer* is a vessel used in exchanging grain between elevators and so it ought to be familiar with what is done in the movement of grain. The circumstances were on each side special, having regard to that trade, and so was the use of slips therein such as this.

The neglect to signal by both ships induced a situation of danger and there therefore remains the question whether, each having neglected to conform to the rule, this situation as it afterward developed showed that the accident which happened was due to the further fault of either or both ships.

The manoeuvres of each of these ships were as follows as I find on the evidence. The *Westmount* swung across

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the slip, moving backward, while the *Fryer* when three hundred feet (300') out from the Government dock, according to her first mate, stopped her engines and reversed. She intended to go to the Government dock and had she continued on she could, in my opinion, have tied up there, in which case the *Westmount* if properly handled, could have passed out. The engineer of the *Fryer*—and he was on the dock and not on the vessel—on the Government dock—said that the *Fryer* had got half her length inside the Government dock when the stern of the *Westmount* was 75 feet away, while the master of the *Fryer* says that he lapped the dock to the second button; that is 75 feet from the outer end of the dock when the stern of the *Westmount* was about the fourth button or 150 feet from the end of the dock. This leaves 75 feet between the two ships, as both these men agree.

The *Fryer* could have made a landing at the dock even if she had to go astern so as to get more room and that is what she should have done. The evidence is that she was going at a slow rate of speed when she checked. According to her captain she was stationary, or about 65 to 80 feet from the end of that dock, as she went—according to him—35 or 40 feet after he stopped her engines 100 or 125 feet from the end of the dock. This indicates that she could have got near enough to put out a line and far enough up to lie safely, having regard to the overlapping of the end of the Government dock by her stern.

The fact that the *F. B. Squires* left 450 feet behind her indicates to my mind that there was space enough and there was a reasonable time to give the *Fryer* the chance to get to the dock in priority to the *Westmount* and thus force the latter to alter or stop her movements. The Harbour Master of Port Arthur confirms this view to a certain extent by saying that he would under the circumstances have tied up at the dock, and I may add in passing that the brother of the *Fryer's* master was on the end of the Government dock, ready to handle the line had she chosen to go in there and attempt to make a landing. Instead of this the *Fryer* blew two blasts, which is a passing signal, and by reversing threw her bow towards the dock, making it difficult if not impossible to go promptly to port of the

Westmount according to her signal. Why he gave this signal, which indicates a change of mind, I cannot say. If he thought he couldn't make the dock, as I have suggested, it was because he had come in too close. He could have stopped earlier than he did. He said on cross-examination that he could have stopped her at her slow speed at 20 or 25 feet, although shortly after he somewhat modified this statement by more than doubling the number of feet in which he thought he could have stopped. I think he could have stopped outside the channel where he would have had free water to the north of him. He drew only 16 to 18 feet and the fairway was 23 feet. He says he came on because he got no signal. The result of not checking in time landed him in an awkward position, with shallow water on either side—a position which he could have avoided. He was in too great a hurry to get inside.

I therefore find that the *Fryer* was to blame for not stopping earlier and for not attempting to make the Government dock and tie up to it, and that she allowed herself to get too far in to make a safe passage to port.

The *Westmount*, I find, endeavoured to make too hasty an exit from the slip and in so doing added unnecessarily to the complications of the situation. This is supported by the evidence of several witnesses, who speak of her speed as being too great and unnecessary and no one from the *Westmount* is called to deny it. The *Westmount* should have gone more slowly when it was found that the *Fryer* had entered the channel. Also, the master of the *Westmount* did not reply as he should have done to the first signal from the *Fryer*. He should have at once replied and his excuse that he was at a loss is not sufficient.

The officers of the *Westmount* seem to have been somewhat careless in observing the movements of the *Fryer* until too late to be of very much use.

I think also that the *Westmount* should have gone more slowly or stopped when she discovered, or should have discovered that the *Fryer* was inside the channel. Whether or not her backwash affected the *Fryer* I am unable to say but the action of her screw would tend to make her stern approach the *Fryer*, but the *Fryer* was in my judgment too

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far in by her own want of action and even if the current affected her she contributed to her contact with the *Westmount* by stopping too late and reversing her engines, thus throwing her bow into starboard.

The most that can be said about the current is that the backwash and the effect of her reversing altered her position for the worse.

The result of the movements of both vessels at this later stage contributed in my judgment to the accident.

As in all cases of this nature there is much conflicting evidence and there is a great difference as to distances, which some of the witnesses could not estimate with any degree of accuracy or fairness, but I think the causes of the accident are those which I have stated and are fairly clear.

In the result I find both vessels to blame and I condemn the *Fryer* to pay one-half the damage and one-half the costs, leaving the *Westmount* to pay the other half, and I refer the fixing of the damages to the Registrar.

Judgment accordingly.
