

1894

Oct. 29.

QUEBEC ADMIRALTY DISTRICT.

THE HONOURABLE AUGUSTE O. }
 P. R. LANDRY (DEFENDANT)..... } APPELLANT ;

AND

WALTER J. RAY, THOMAS CON- }
 NOLLY AYLWIN, JAMES BOS- }
 WELL, VEASEY BOSWELL AND } RESPONDENTS.
 HENRY HAVELOCK SHARPLES, }
 (PLAINTIFFS)..... }

THE BERNADETTE AND THE MURIEL.

Appeal from Local Judge in Admiralty—The Admiralty Act, 1891 (54-55 Vict. c. 29)—Interference with finding of fact.

On appeal from a judgment of a local Judge in Admiralty under section 14 of *The Admiralty Act, 1891 (54-55 Vict. c. 29)* the court will not interfere with a finding of fact by the local judge unless it is satisfied beyond a reasonable doubt that the evidence does not warrant such finding.

APPEAL from a judgment of the Local Judge in Admiralty for the Quebec District (1).

The case on appeal was argued at Quebec on March 13th, 1894.

T. C. Casgrain, Q.C. (Attorney-General for Quebec), for the appellant, cites the By-laws and Regulations of the Quebec Yacht Club Nos. 34 and 36 ; Imperial regulations for preventing collisions at sea, arts. 14 and 25 (2).

I. N. Belleau, Q.C., followed for the appellant. He cited rule 32 of the By-laws and Regulations of the Quebec Yacht Club.

(1) Reported *ante* p. 94.

(2) See R. S. C. c. 79.

Pentland, Q.C., for the respondent cites the *Carlotta* (1); the *Clara Killam* (2); the *Eliza Keith* (3); the *Martha Sophia* (4); the *Lake St. Clair* (5); the *Mary Bannatyne* (6); *Broom's Legal Maxims* (7); *Matthew v. Boyce* (8); *Marsden's Collisions at Sea* (9); *Lownde's Collisions at Sea* (10); *Lawrence v. Blake* (11); *Swan v. Blair* (12); the *Roslin Castle* (13).

Mr. Casgrain replied.

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THE JUDGE OF THE EXCHEQUER COURT now (October 29th, 1894) delivered judgment.

This is an appeal by the defendant and a cross-appeal by the plaintiffs from the judgment of the Local Judge in Admiralty for the Quebec Admiralty District, finding both parties in the wrong, the one for a breach of the sailing rules, the other for the violation of the general rules of the Quebec Yacht Club, of which all parties were members.

It is admitted that, judged by the regular sailing rules, the *Bernadette* was wrong in not giving way in time to prevent a collision, the only question on that part of the case being whether or not the defendant was justified, under all the circumstances of the case, in assuming that the *Muriel* would keep clear of the *Bernadette*, and the learned judge of the court below has found as a fact that he was not so justified. If I had heard the evidence, and it had left on my mind the same impressions that I have derived from reading it, I should, I think, as a judge of first instance have had some hesitation in coming to the same conclusion,

(1) 4 Jur. 237a; Pritchard's Adm. Dig. vol. 1 p. 221.

(2) 2 Q. L. R. p. 56.

(3) Cook's Adm. Rep. 111.

(4) 2 Stuart's Adm. R. 17.

(5) Cook's Adm. Rep. 48.

(6) 1 Stuart Adm. Rep. 354.

(7) P. 695.

(8) 1 Starkie 425.

(9) P. 349, 495, 471.

(10) P. 67.

(11) 8 Cl. & Fin. p. 552.

(12) 3 Cl. & Fin. 631.

(13) 1 Stuart's Adm. Rep. 307.

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although it must be, of course, admitted that before one departs from the ordinary sailing rules, he should be very sure that he has good and clear reasons for doing so. The learned judge who heard the parties has decided that in this case such reasons did not exist, and there is, I think, no sufficient ground for a judge sitting in appeal to reverse that finding.

With reference to the *Muriel*, I have no difficulty in agreeing with the view taken by the Local Judge in Admiralty. By his want of candour and straight-forwardness, and by persisting in going round the course contrary to the rules of the club, Mr. Ray, in a measure, brought the accident on himself, and I fail to see what good ground of quarrel the plaintiffs have with the judgment appealed from.

The appeal and the cross-appeal will be dismissed, but without costs.

Judgment accordingly.

Solicitors for appellant: *Belleau, Stafford, Belleau & Gelly.*

Solicitors for respondent: *Caron, Pentland & Stuart.*