

The plaintiffs should have the costs of the appeal, but there should be no order as to the costs of the action—such disregard of the plain words of the statute regarding the registration of the by-law as the plaintiffs were guilty of should be discouraged.

*Appeal allowed.*

SECOND DIVISIONAL COURT.

OCTOBER 6TH, 1916.

WEDEMEYER v. CANADA STEAMSHIP LINES LIMITED.

*Negligence—Seaman Swept from Ship and Drowned—Action under Fatal Accidents Act—Failure to Prove Negligence Causing or Contributing to Death—Acts or Omissions of Fellow-seamen—Common Employment—Application of Ontario Workmen's Compensation for Injuries Act—Findings of Fact of Trial Judge—Appeal.*

Appeal by the plaintiffs from the judgment of BRITTON, J.,  
10 O.W.N. 284.

The appeal was heard by MEREDITH, C.J.C.P., MAGEE and HODGINS, J.J.A., and CLUTE, J.

A. C. Kingstone, for the appellants.

D. L. McCarthy, K.C., for the defendants, respondents.

The judgment of the Court was read by MEREDITH, C.J.C.P., who said that the question involved was not whether there was any evidence upon which reasonable men could find that the death of the plaintiffs' son was caused by the actionable negligence of the defendants, nor whether there was any evidence upon which a reasonable man could find, as the trial Judge did, that they were not so guilty; if it were, the appeal must obviously fail, as it also must if the case had been tried with a jury and their verdict had been—as the Judge's was—"not guilty."

Bearing in mind the obvious advantages which a trial Judge has over a court of appeal, the findings of fact of the trial Judge should not lightly be interfered with.

The question was whether the trial Judge was wrong in refusing to hold the defendants guilty of causing the death of the plaintiffs' son by actionable negligence and of hanging a judgment for substantial damages upon it.

The grounds of negligence relied on were: (1) that the ship was overloaded; (2) that the man at the wheel was inexperienced;