

The action was tried without a jury at Parry Sound. McGregor Young, K.C., and H. E. Stone, for the plaintiffs. R. McKay, K.C., and W. L. Haight, for the defendants.

LOGIE, J., in a written judgment, said that the plaintiffs and the defendant Alonzo W. Daball were boat-liverymen at Parry Sound, and the defendant Byron Daball was the son of his co-defendant.

Both motor-boats were equipped with and carried the lights directed by rules 41 and 42 of the rules concerning motor-boats, as set forth in the Rules of the Road for the Great Lakes, including the Georgian Bay, adopted by order in council of the 4th February, 1916, and issued by the Canadian Department of Marine.

It was admitted by both plaintiffs and defendants that on the night of the collision neither boat had its white light shewing.

The plaintiffs' boat, carrying 10 passengers, was in charge of one Willett, an experienced master mariner. The defendant Alonzo W. Daball's boat was in charge of his son, the defendant Byron Daball, a young man of little experience and uncertificated.

The testimony as to how the collision occurred was conflicting: the learned Judge accepted the testimony of Willett, and found that the proximate and efficient cause of the collision was the disregard by Byron Daball of rule 32 of the Rules of the Road.

The learned Judge was, however, of opinion that the infringement by the plaintiffs of the rule requiring them to shew a white light might have and did in fact contribute to the accident: Canadian Lake and Ocean Navigation Co. Limited v. The "Dorothy" (1906), 10 Can. Ex. C.R. 163, 174; Canadian Sand and Gravel Co. v. The "Key West" (1917), 38 D.L.R. 682, 16 Can. Ex. C.R. 294.

The learned Judge accordingly finds both boats at fault and that there is a joint liability.

This being so, the damages must be apportioned in accordance with the decision in Shipman v. Phinn (1914), 32 O.L.R. 329, having regard to sec. 918 of the Canada Shipping Act, R.S.C. 1906 ch. 113.

Each of the boats was a "ship" under that Act—neither was registered under sec. 6, but both were, under sec. 5, exempt from registration.

The owner of the boat doing the damage was the defendant Alonzo W. Daball, and the plaintiffs' loss fell under sec. 921 (d) of the Act. See The "Warkworth" (1884), 9 P.D. 145.

Both boats were entitled to limit their liability under sec. 921 (d).

The learned Judge assesses the damage done to the plaintiffs in respect of the loss of their boat at \$1,500 and the money loss in