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Jan. 19.

QUEBEC ADMIRALTY DISTRICT.

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

THE HONOURABLE AUGUSTE C. P. R. LANDRY.....	}	DEFENDANT.
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The BERNADETTE and the MURIEL.

Maritime law—Collision between yachts during race—Breach of Quebec Yacht Club rules—Damages—Costs.

By one of the general rules of the Quebec Yacht Club it is provided that while a race is in progress, boats, other than those in the race, shall keep clear of the competing yachts, and, particularly, that they shall not round any of the buoys that mark the course of the race. One of the conditions of the *Ritchie-Gilmour* cup race is, that "the yachts are to be manned entirely by members of the club, and sailed and steered by the owners or part-owners."

Two yachts, the *B.* and the *M.*, started upon a certain race for this cup, the former being in every way qualified to compete, the latter being disqualified for winning the cup from the fact that she was partly manned by a professional crew. It appeared from the evidence that the owner of the *B.* was under the impression that the *M.* was really not in the race; but, on the other hand, the *M.* carried a flag indicating that she was in the race, and in every way acted as if she was a competing yacht. The two boats rounded the first buoy, the *B.* leading, and after one or two tacks had been made beating against the wind, they came towards each other close hauled, the *M.* on the starboard and the *B.* on the port tack. Under the regular sailing directions it was the duty of the *B.* in such a case to give way, and that of the *M.* to continue her course. Instead of this, they both continued their course until the *B.*, when too late, attempted to give way and then ran into the *M.* doing her considerable damage. Those on board the *B.* claimed they did not see the *M.* until they were immediately upon her, and that when they did see her they thought she would keep out of their way because she was not in the race.

Held, that those in charge of the *B.* had no right to suppose, under the circumstances preceding the collision, that the *M.* would act in any other way than a competing yacht would do, and that they were at fault for not giving way to her, as the sailing rules required, quite irrespective of any rights which the *M.* might have with regard to the race.

2. That the *M.*, not having complied with the conditions of the race with regard to the character of her crew, was wrong in sailing the course at all, and was, therefore, also at fault for the collision.

The damages were ordered to be assessed and divided, each party paying his own costs.

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 Statement  
 of Facts.  
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THIS was an action arising out of a collision between two yachts belonging to members of the Quebec Yacht Club while competing for a cup in a Corinthian race.

December 22nd and 23rd, 1893.

The case was heard before the Honourable George Irvine, Local Judge in Admiralty for the Quebec Admiralty District.

Pentland, Q.C. for plaintiffs;

Belleau, Q.C. for defendant.

IRVINE, L. J., now (January 19th, 1894,) delivered judgment

This case arose out of a collision between two yachts belonging to the members of Quebec Yacht Club, the *Bernadette*, owned by the Honourable Senator Landry, and the *Muriel*, owned by Mr. Walter Ray and others.

The collision occurred during the race for what is called the *Ritchie-Gilmour* cup, on the 23rd July, 1892.

This race was originally intended to have been run a month earlier, but, for one reason or another, was postponed until the last mentioned day. The course was from off Bellechasse light, rounding the buoys off St. Thomas Banks, Margaret Islands and Grosse Isle, thence back to Bellechasse light. The conditions of the race were "that the yachts were to be manned entirely by

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members of the club and sailed and steered by owners or part owners." Previous to the day on which it was originally intended that the race should take place, three yachts were entered for the race, the *Bernadette*, the *Muriel* and the *Onyx*; the entries seem to have been regularly made and no objection is made on this score. On the morning on which the race was run the three yachts met near Bellechasse light at the starting point. There seems to have been, for some reason not explained in the evidence, a doubt as to whether the *Muriel* would take part in the race or not, and, on the invitation of Mr. Ray, Mr. Landry, Mr. Panet Angers and Mr. Stafford went on board the *Muriel* and in the course of conversation asked Mr. Ray whether he intended to take part in the race. There seems to be a little uncertainty and confusion as to what exactly took place. Mr. Landry claims that Mr. Ray gave evasive answers and avoided saying whether he would go into the race or not. Mr. Ray said, and it is pretty well admitted by the others:—"I am going to sail over the course, so look out for me." The visitors then returned to their own yacht and at the proper time the three boats started together. The *Muriel* had a flag hoisted, indicating that she was in the race, and she had on board, and kept there all the time, the two men who formed her ordinary crew

The vessels started on the course. After they rounded the first buoy—the *Bernadette* leading, and the *Muriel* following—and after one or two tacks had been made beating against the wind, the *Muriel* and the *Bernadette* came towards one another close hauled, the *Muriel* on the starboard and the *Bernadette* on the port tack. Under the regular sailing directions it was the duty of the *Bernadette* to give way and for the *Muriel* to continue her course. Unfortunately they both continued their course until the *Bernadette*, when too late,

attempted to give way and then ran into the *Muriel*, doing considerable damage and endangering the lives of those on board. The persons on board the *Bernadette* all say that they did not see the *Muriel* until they were immediately upon her, and that when they did see her they thought she would keep out of their way because she was not in the race. The *Muriel* had throughout the race up to this point acted as if she was a competing yacht. The crew of the *Bernadette* had no right to suppose, in view of the circumstances preceding the collision, that the *Muriel* would act in any other way than a competing yacht would do; being on the port tack it was therefore the duty of the *Bernadette* to give way to the *Muriel* quite irrespective of any rights which the *Muriel* might have with regard to the race. The crew of the *Bernadette* had not kept a proper lookout, they knew the *Muriel* was near them and they did not see her until it was too late to avoid the collision.

I am of opinion, therefore, that the *Bernadette* was in the wrong, and upon that point there is very little doubt in the case. But the question as to how far the *Muriel* was in the wrong, and contributed to the accident is one of more difficult solution. After giving the subject my best consideration I have come to the conclusion that the *Muriel* had no right to be in the race. It is impossible to say that a vessel under circumstances such as existed in this case, can be a *bonâ fide* competing yacht. She had her ordinary crew on board and the principal object in this race, as expressed in the letter from the donors who presented the prize to the club, is to give an opportunity to increase the maritime knowledge of the amateur members of the yacht club. If the plaintiffs sailed their yacht with an ordinary crew of seamen it is quite clear, as is properly explained by Mr. Shaw, who was the judge of the race, that they could never win the prize. How is it possible to say

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that in a case of this kind a vessel which was disqualified from winning the prize by the character of her crew could be considered as *bonâ fide* in competition with others who were properly qualified? This the owners of the *Muriel* must have been well aware of. It is worthy of remark here, however, as supporting the correctness of my views respecting the *Bernadette*, that the people on board the *Bernadette* could not during the race have known with certainty whether the *Muriel* was qualified or not, as without their knowledge the professional crew might have been sent ashore before the boat started. The owner of the *Muriel* in my opinion was acting against the rules of the club in being at or near the race at all. The rule forbids any vessel not in the race keeping near the racing yachts in any way, and particularly they are forbidden to round any of the buoys which form the marks of the course. All this was done in this case by the *Muriel*. Had the *Muriel* not been in the place in which she was at the time the collision occurred, and I hold she had no right to be there, the accident would not have happened; and I, therefore, hold that the owners of the *Muriel*, being members of the yacht club, were bound by its rules and that Mr. Ray, who was in charge of the vessel at the time, although from the point of view of the sailing rules he was right in keeping his course when on the starboard tack, he was wrong in being on the course at all, and I hold, therefore, that he was also in the wrong and contributed to the accident.

It has been extremely difficult to find any case at all in point to the rather difficult question which was raised in this case. As far as I have been able to discover there is no single case which has come before the courts in England, or up to this time in Canada, in which a question has come before the Admiralty in reference to collision between yachts in a race, although

no doubt many such cases must have occurred. Doubtless the yacht clubs in England settle this among themselves.

I think it also of importance to notice the fact that Mr. Shaw, who was chairman of the sailing committee of the club and was a judge of the race, by his final report, the only one which is of record in the yacht club, leaves the *Muriel* out of the race altogether. It is quite true that in the first instance he did not seem disposed to go so far and prepared a report in which he gave the time of the *Muriel* from the start up to the moment of the collision, but this report was never sent in and was destroyed, and the one now produced substituted.

It is true that this was done under the idea that the difficulty between the parties to this case had been amicably settled, but, in my opinion, that does not change the fact that the report which is filed is the final decision of the judge of the race.

I must say that it is much to be regretted that this case should have come before the courts at all. A club, such as the yacht club, composed of gentlemen associated together for the purpose of promoting the manly and enjoyable sport of yachting, ought to be able to settle their own difficulties under their own rules.

I, therefore, hold that both vessels were in fault, and I order the damages to be assessed and divided and that each party pay his own costs.

Judgment accordingly.

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

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

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