

flow of Rainy River, as to prevent navigation by the same steamer during the same period.

I. F. Hellmuth, K.C., and Bartlett, for plaintiffs.

Glyn Osler, for defendants.

HON. MR. JUSTICE BRITTON:—In this case there is no evidence that the defendants erected piers in Rainy River, or that any pier in such river so obstructed navigation as to delay the steamer "Agwinde" as charged.

I find that the defendants in floating their sawlogs, and in using the boom or booms as they did, were using the river in a reasonable way under all the circumstances, and that there was no wilful or wrongful obstruction of navigation.

The defendants so opened their booms and so moved their logs as to inconvenience the steamer of the plaintiff as little as possible.

The defendants did all that could reasonably be expected of them, in making way for the steamer.

The defendant company was not guilty of any negligence or of any wilful wrongdoing, and I am of the opinion that the plaintiff company, although delayed for a short time on certain occasions when passing the logs, did not incur any appreciable or measurable damage by reason thereof.

The defendants' logs, had, subject to reasonable limitations, an equal right upon the river with the steamer belonging to the plaintiff.

The steamer must be so navigated and used as not measurably to prevent the defendant keeping together and moving the sawlogs to their destination.

The defendant must not so fill the river with logs and booms as to prevent navigation by the steamer.

There must be give and take.

In this case the defendants' servants made the openings within a reasonable time, and gave the plaintiff reasonable facility in navigating the steamer.

The plaintiff's claim in this action is quite inconsistent with the claim in the other, where damages are, at least in part, sought for detention of the same vessel, covering the same period, because of keeping back the water necessary for navigation purposes.

The action should be dismissed with costs.

Thirty days' stay.