

E. F. B. Johnston, K.C., and W. H. Irving, for the appellant, contended that the arbitrators had proceeded upon a wrong basis of valuation, and one which conflicted with and contradicted the terms of the submission, and that in effect they had gone behind the entries in the books.

W. E. Middleton, K.C., and G. W. Mason, for the respondents.

SUTHERLAND, J., referred to the rule stated by Ritchie, C.J., in *McRae v. Lemay*, 18 S. C. R. 280, 283, and, after setting out the facts, concluded:—

Having carefully read and considered the award, I can see no error on the part of the arbitrators appearing on the face thereof or of any paper accompanying and forming part of it. No error or mistake has been admitted by them. They expressly disaffirm the reception of evidence "for the purpose of controverting, varying, or falsifying the figures set forth as assets in the statement of the 1st June, 1909, or otherwise entered in the books of the company."

I think, therefore, in dealing with this appeal, I should follow the principles laid down in *McRae v. Lemay*, and *Dinn v. Blake*, L. R. 10 C. P. 388; and, doing so, must dismiss the appeal with costs.

TEETZEL, J., IN CHAMBERS.

MARCH 12TH, 1910.

*GAGNE v. RAINY RIVER LUMBER CO.

Third Party Procedure—Con. Rule 209—Relief over—Tort—Measure of Damages.

Appeal by the Minnesota and Ontario Power Co. from an order of the local Judge at Kenora dismissing a motion by the appellants to set aside a third party notice served by the defendants on the appellants, under Rule 209.

The plaintiff was the holder of a license entitling him to operate a ferry between the town of Fort Francis, in Ontario, and two towns in Minnesota, on the opposite banks of the Rainy river, which is a navigable stream and the international boundary.

The defendants, a lumbering company, were engaged in driving or floating logs down the river at the points where the plaintiff was entitled to operate his ferry; and the action was for damages arising from the plaintiff's business as a ferryman being interfered with by the defendants' logs, the plaintiff alleging that the river was so filled and blocked with logs that navigation was impossible.

*This case will be reported in the Ontario Law Reports.