

and find that the easterly one-half mile of this main boom is wholly within Canadian territory, its easterly end being 310 feet north of the thalweg, and it being at point marked 2 on Ex. 17 (being a point about half a mile further westerly) 340 feet north of the thalweg.

This portion of the main boom, like the sheer boom, is unlawfully in the river. If it and the sheer boom had not existed it is reasonable to suppose that many more logs would have passed down the river on the Canadian side of the boom. Witnesses speak of the logs coming over the falls at times in quantities sufficient to cover the river from bank to bank.

There was some opinion evidence as to what proportion of logs was diverted by the sheer boom inside the plaintiff company's works, but it is valueless, there being no reliable data from which to form such opinion, but there is an entire absence of evidence as to the effect of the illegal half mile of boom structure.

What I have said in respect of the legal consequence of the existence of the sheer boom applies also to the case of the unlawful half mile of main boom.

But apart from the question whether the works of the plaintiff company in whole or in part are lawfully in the river, it is to be observed that the right to erect and maintain them is quite different from the right to collect tolls, which is the only issue involved in this action. The defendant company is asking no relief but simply resisting a money claim. The works may or may not improve the navigability of the river; they may or may not be lawfully there, but so far as the defence is concerned the sole question is whether the plaintiff company is entitled to recover money damages in respect of the defendants' logs which passed through the works in the years 1906 and 1907.

The legislation of the State of Minnesota is the only legislative authority upon which the plaintiff company relies as authorizing them to impose tolls. Had the State Legislature power to grant such authority?

Under the Ashburton Treaty the citizens of the two countries became entitled to the free use of the river. The Legislature of the State of Minnesota has purported to deprive them of that right by granting permission to the plaintiff company to exact tolls. The undisputed evidence