

HON. SIR WM. MULOCK, C.J.Ex.D. SEPT. 11TH, 1912.

RAINY RIVER BOOM CORPORATION v. RAINY
LAKE LUMBER CO.

4 O. W. N. 5.

Water and Watercourses—Floatable River—Unlawful Erection of Boom in River — Ashburton Treaty — Ultra Vires State Legislation.

Action to recover certain sums of money for booming, sorting, rafting and driving defendant company's logs in the Rainy River during the years 1906 and 1907.

Plaintiff company, incorporated under Minnesota laws, was authorized, by its charter, to erect booms in the Rainy River and to charge tolls for booming logs. Defendant company, in common with others, floated its logs down the Rainy River, this being the only practicable method, and plaintiffs' booms, which were on the Canadian side of the river, were of some assistance in separating their logs from those belonging to others. The Rainy River is a navigable stream, and the international boundary between the United States and Canada runs up its thread, the stream being free to the citizens of both countries under the Ashburton Treaty. Plaintiffs' claim was based on implied contract and on the right under its charter to collect tolls.

MULOCK, C.J.Ex.D., *held*, that there were no circumstances from which any implied contract to pay could be inferred, and that plaintiffs could not force their services on defendants.

That plaintiffs' erections in Canadian waters were in violation of the Treaty and wholly unauthorised, and that plaintiffs had no right to divert defendants' logs into foreign territory and seek compensation for services in respect thereof.

Hiscox v. Greenwood, 4 Esp. 174, referred to.

That the clause in plaintiffs' charter permitting them to levy tolls was in breach of the Ashburton Treaty, and, therefore, *ultra vires* of the State legislature of Minnesota.

Action dismissed, with costs.

G. F. Shepley, K.C., for plaintiffs.

G. H. Watson, K.C., for defendants.

HON. SIR WM. MULOCK, C.J.Ex.D.:—This action is brought to recover certain sums of money from the defendant company for booming, sorting, rafting and driving the defendant company's logs down the Rainy River during the years 1906 and 1907. It may be convenient to refer to the plaintiffs as the boom company and to the defendants as the lumber company.

The boom company was incorporated by articles of incorporation issued under the laws of the State of Minnesota and dated the 23rd February, 1889, which articles purported to empower the boom company to construct and maintain booms and other works on the Rainy River, to