

IMPORTANT LEGAL DECISION AFFECTING LUMBERMEN.

The Rathbun Company, Applicants; The Longford Lumber Company, Respondents. This case was heard in the County Court of the County of Victoria, and was an application under the Rivers and Streams' Act to fix the tolls on South Creek in the district of Coluberton. The judgment is as follows:

In the matter of the Act for Protecting the Public Interest in Rivers, Streams, and Creeks, and in the matter of an application to fix the tolls on South Creek, in the Provisional County of Haliburton.

The Rathbun Company are the Applicants and the Longford Lumber Company are the Respondents. The first named Company is the holder of a timber license for the northwesterly portion of a township of McClintock, in the said provisional county, and the last named company of the southeasterly part of said township.

A small rivulet or creek named South Creek takes its rise in what is described in the evidence as the big marsh in said township, and running through the lands of both the above named companies for a distance of about seven miles, empties into Ox-Tongue Lake, also in said township. About the first day of October, 1898, the Rathbun Company, in order to bring the pine timber

said company was used in said improvements and not included in above mentioned sums.

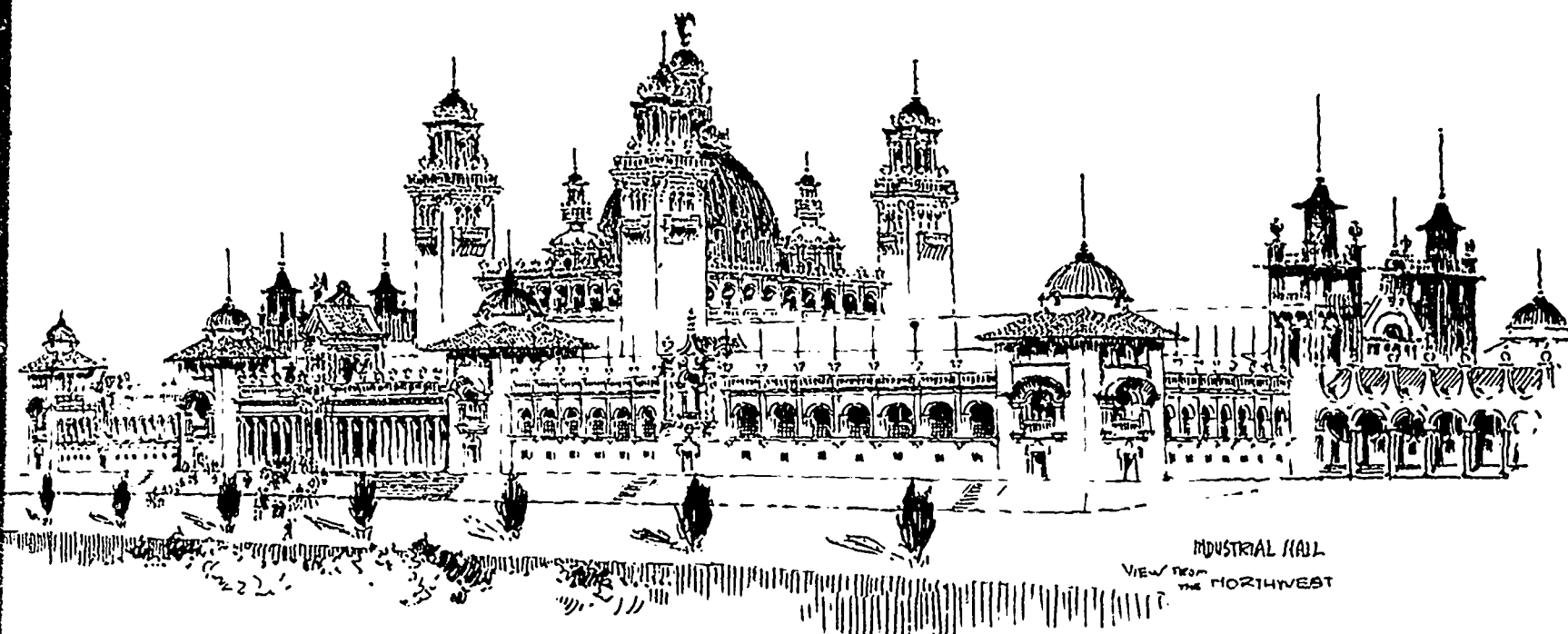
The Longford Lumber Company during the season of 1900 and 1901 have cut and landed a quarter million ft. B. M. on the banks of South Creek and are now using the improvements of the Rathbun Company on said creek for running or driving their said logs and timber, and they allege that in order to make the said improvements useful for their purposes they were obliged to expend \$1,150 in extending said improvements, adding thereto and in repairing same. It was further admitted that the above mentioned quantity was all the logs and timber that the said company would bring down said creek, and that after they finished driving out their present year's cut the improvements will not be of any further use to the said company.

On the 27th day of March last an application was made on the affidavit of the solicitor of the Rathbun Company to issue an order and appointment to settle the tolls to be paid by the Longford Lumber Company to the said Rathbun Company for the use of their improvements on said South Creek. An order and appointment was issued by me fixing the 12th day of April last to proceed with the enquiry and settle the amount of said tolls, and by the said order and appointment I directed a copy of said order and appoint-

neat dams.....	700.00
5th Costs and expenses of superintendent.....	217.50
6th Allowance for time of book keeper.....	140.00
7th Maintenance and repairs, including Jackson's dam.....	350.00
8th Expenditure for fire ranging.....	103.00
9th Interest on items 1 to 9 from date of Expenditure until judgment.....	

They also contended that the improvements should be divided into three sections as shown on Plan Ex No. 3, and the tolls computed according to the quantity of timber and logs driven over each section by the respective companies. They further contended that the Respondents expenditure for improvements and repairs made on the works this spring in order to enable them to use the said South creek amounting to \$1,150 should not be taken into account when fixing the tolls to be paid by said Respondents to the Applicants. They further contended that the improvements made by the Respondents were above the area of the improvements made by the Applicants. They further contended that under the last clause of Section 13, Cap 142, R.S.O. 1897, the Applicants were entitled to some further allowance for risk, and they ask for the costs of these proceedings, and referred to Cap. 76, Section 1, R.S.O., Sec. 14, Cap 142 and Section 22, Cap. 143, R.S.O. 1897.

Counsel for the Respondent Company admitted



GLASGOW EXHIBITION BUILDINGS INDUSTRIAL HALL.

on their limit adjacent to South Creek into market, commenced the improvement of that stream so as to make it floatable for logs and timber, and it was admitted that up to the first of March, 1899, they had expended the sum of \$2,494.12 in building dams, slides and other improvements of a like nature on said stream. The Rathbun Company after their experience in driving their logs and timber on South Creek during the spring of 1899, deemed it necessary that further improvements should be made to enable them to run out the balance of their pine timber adjacent to the said creek, and it was admitted that they had expended for such improvements \$2,539.20 between the month of August, 1899, and the 21st day of December following. There appears to have been some correspondence between the above mentioned companies about the landing of the logs of the Longford Company on the banks of South Creek during the winter of 1899 and 1900, and it was conceded that the last mentioned company had remained during that season from landing their logs on said creek at the request of the Rathbun Company. It is admitted that the Rathbun Company have driven out of said South Creek \$300,000 ft. B. M. of logs and timber, and that they have no further use for their improvements on said creek. It is further admitted that rough timber of the value of \$100 belonging to

ment to be served upon the Longford Lumber Company on or before the 5th day of April last, and that a copy thereof should be published once in the Canada Lumberman. The appointment having been adjourned until the 19th day of April last on the application of the Respondents Company, the matter came on for hearing before me on that day in presence of counsel for the Applicants, and Respondents' proof having been given of the insertion of a copy of the said order and appointment in the Canada Lumberman as directed, I proceeded with the examination of witnesses and hearing on that day and on the 30th day of April last.

The matter was argued at length before me, Mr. McLaughlin and Mr. F. E. Hodgins, of the Toronto Bar, for the Applicants, and Mr. Stewart for the Respondents.

The learned counsel for the Applicants claimed that the following accounts and allowances should be credited to the said company's improvements:

1st The amount expended in 1898 and 1899 \$2994.12	
Interest thereon from date of Ex. to date of judgment.....	
2nd. Amount expended in 1899 and 1900 \$2539.20	
Interest from date of Ex to date of judgment.....	2539.20
3rd. Allowance for rough timber used in work above the value of rough timber taken from Respondent's lands.....	100.00
4th. Cost of clearing and burning brush.....	

that items Nos. 1 and 2 are properly taken into account, but contended that interest should not be allowed for the first and second year, as the Applicants were in the sole and exclusive use of the said improvements during those years. That item No. 3 above should not be charged in the account, as the rough timber used was of no commercial value, and that the action of the Applicants in not taking out the hemlock timber adjacent to the said creek after the improvements were all made proved that said timber was valueless; that no proper account was kept in the Applicants' books of the quantity of rough timber used in the construction of said improvements or of the particulars of items Nos. 4, 5, 6, 7, or 8, although it was proved that the Applicants' manager, Mr. Callaghan, instructed the book-keeper to keep a particular account of those improvements, as the Respondent Company would be liable to pay a portion of the cost; that the and 2 above and claiming no interest or any Applicants served a statement on the Respondents showing their total expenditure on said improvements to be \$5,533.32, comprising items Nos. 1 further payment or allowances; that Applicants cannot be permitted to extend their claim beyond the said statement or in any event beyond the items of claim mentioned in their affidavit of claim filed herein, that no allowance beyond