

Action dismissed with costs. Judgment for defendant company on counterclaim for balance due under the agreement, with costs. Amount of balance to be ascertained by Master if parties cannot agree.

STREET, J.

JANUARY 29TH, 1903.

TRIAL.

PERRY v. CLERGUE.

*Constitutional Law—Right of Dominion Government to Grant Lease of Ferry—River Separating Canada from the United States—B. N. A. Act, sec. 109—"Royalties"—B. N. A. Act, sec. 91, sub-sec. 13—Legislative Authority over Ferries—Distinction between Right of Property and Legislative Power—Public Harbour—Improvements—Rights Arising from.*

Action by Robert Davey Perry and the Sault Ste. Marie Ferry Company against F. H. Clergue, W. B. Rosevear, the International Transit Company, and the Algoma Central and Hudson Bay Railway Company, to restrain defendants from infringing upon the exclusive right claimed by plaintiff Perry to a ferry between the town of Sault Ste. Marie in the Province of Ontario and the town of Sault Ste. Marie in the State of Michigan across the St. Mary's river, which passes between these places, and for damages. The plaintiff Perry claimed the right to this ferry and to prevent defendants from ferrying persons across the river from any point in the Canadian town to any point in the American town, under and by virtue of a lease made to him in the name of Her late Majesty by the government of the Dominion of Canada, dated 21st May, 1897, of the ferry right for nine years at the annual rent of \$100, subject to certain conditions, one of which was that "the limits of the ferry shall be co-terminous with the limits of the town of Sault Ste. Marie, Ontario, to a point in the town of Sault Ste. Marie, Michigan, to be fixed by the municipal authorities of that place." It was admitted that defendants the Algoma Central Railway Company had since the month of August, 1902, been running a steamboat regularly every half hour from their dock in the Canadian town across the river to a point in the American town, and had advertised it as a ferry. These defendants denied plaintiffs' title to the ferry, and claimed the right to run this steamer under one of the provisions of their charter as a railway company.

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

W. Nesbitt, K.C., and J. E. Irving, Sault Ste. Marie, for defendants.

W. R. Riddell, K.C., for the Attorney-General for Ontario.