

meddle with his property and then in his own name maintain an action for such services. If, at the request of the Rat Portage or any other company it performed any service it may have a cause of action against such moving company, but not, on an implied contract, as against the present defendant company.

For these reasons, I am of opinion that the defendant company is not liable to the plaintiff company on any implied contract.

The other ground on which the plaintiff company rests its claim is that it is legally entitled to maintain its works as a whole, including the sheer boom, which is wholly within Canadian territory, and, by means of its works, to take and retain possession and control of the lumber company's logs as they float down the stream and until they are caught by the cross booms and sorted into pockets, and to charge the company for such service. The defendant company denies the right of the plaintiff company to interfere with its logs or to payment for such services.

Much the same question as is involved here came before the Circuit Court of the State of Minnesota and was there determined adversely to the plaintiffs, and that decision is pleaded in bar to the present action. By the treaty between Great Britain and the United States of the 9th August, 1842, commonly known as the Ashburton Treaty, the Rainy River is made part of the boundary line between Canada and the United States, the treaty declaring that it "shall be free and open to the use of the subjects and citizens of both countries." The middle of the channel, or thalweg of the river, marks the line of separation between the two countries. (Wheaton's Elements of International Law, 4th ed., p. 297), this treaty confirming the presumption of law that the right of navigation is common to them both.

The sheer boom is a necessary and material part of the plaintiffs' works. Without it a substantial portion of the in question would have floated down the river on the north side of the boom. This sheer boom, however, diverted many (although what quantity cannot be determined) from their natural course into the plaintiffs' works. The sheer boom, built wholly on the Canadian side of the dividing line between the two countries, has no legal authority for its existence. No legislation of a foreign power could