

foreclosure action. Held, that he was not a necessary party to the action, and that the evidence furnished on behalf of the vendor shewed that the husband had no interest in the property.

Order declaring that the vendor had sufficiently answered the requisitions of the purchaser.

LAPOINTE V. ABITIBI POWER AND PAPER CO.—KELLY, J.—
JUNE 18.

Water—Navigable River—Obstruction by Logs—Opening of Boom—Failure to Close—Breach of Duty—Saw Logs Driving Act, R.S.O. 1914 ch. 131, sec. 3—Negligence—Contributory Negligence—Fisherman Lawfully Navigating River—Damages.]—Action for damages for loss alleged to have been caused to the plaintiff, a fisherman, by the defendants blocking navigation at the mouth of the Okikodosic River and on Lake Abitibi. The action was tried without a jury at North Bay. In a written judgment, LATCHFORD, J., said that the defendants were negligent in not maintaining closed the tail-boom behind their logs in the lake at the mouth of the river, and that their failure so to maintain the boom caused damage to the plaintiff. The duty which the defendants owed to the plaintiff, as a person lawfully navigating the river, is stated in sec. 3 of the Saw Logs Driving Act, R.S.O. 1914 ch. 131, which requires persons driving logs down a river so to drive the same as not unnecessarily to obstruct navigation. That the plaintiff himself opened the tail-boom, on his return from the "lift" made from his nets in the lake on the 25th May, was no bar to his right to recover. The defendants' employees, whose duty it was both to open the tail-boom to allow the plaintiff's boat to pass up the river and to close it after he had passed, were absent from their posts. The plaintiff endeavoured to cross the boom by running his boat over it, or "riding" it; and, being unable to pass by this means, tried to open the boom near the shore. This he was unable to do, and he was obliged to open the boom near the centre of the river. It was urged that, had he waited a short time, the defendants' men, whom he passed a few miles up-stream on their return-journey, would have been present to operate the winch provided by the defendants, and thus properly open and close the boom. But it was impossible