

Q. When you came to Fort Frances you told Mr. Sutherland you would not run any more until this boom was changed in the river, down at the boom? A. I asked to have the deep water channel open. . . .

Q. But this was not in the deep water channel? A. 15 ft. on the upper side. Everything was boom, timber and chains. . . .

Q. When you complained to Mr. Sutherland you complained entirely about this boom? A. Yes.

Q. And you told Mr. Horne that? A. About the boom putting us out of the channel."

It is clear from the evidence that the defendants unlawfully interfered with the plaintiff's rights in the river. It was, however, contended that the plaintiffs not having shewn what pecuniary loss they had sustained were not entitled to recover. But such a contention is no answer to the plaintiff's claim. Where there is invasion of a right the law infers damage; *Ashby v. White*, 2 Ld. Raym. 938, as said by Parke, B., in *Embrey v. Owen* (1851), 6 Ex. 353; "Actual perceptible damage is not indispensable as the foundation of an action. It is sufficient to shew the violation of a right, in which case the law will presume damage."

The river is a public highway and the citizens of both countries are entitled to free use thereof. The defendants had no right to erect and maintain therein piers and booms and thereby exclude the plaintiffs from the enjoyments of their rights of navigation. The difficulty, risk, trouble and delay caused to the plaintiffs on several occasions establish not a mere accidental but a high-handed intentional interference by the defendants with the plaintiffs' rights.

For the reasons which appear in my judgment in the *Rainy River Navigation Co. v. Ontario and Minnesota Power Co.*, ante, I am of opinion that the plaintiffs are entitled to maintain this action for damages, and that the amount thereof should not be limited to nominal damages. If the case had been tried with a jury it would have been proper for them, although the plaintiffs were unable to shew the extent of their damage, to award more than nominal damages if they found on the evidence that the wrongful conduct of the defendants had been deliberate, persistent and high-handed, and productive of substantial inconvenience and delay to the plaintiffs; *Bell v. Midland Rw. Co.* (1861), 10 C. B. N. S. 287.