

amount which was not payable when the action was commenced; and indeed that they were bound to do so if they brought it in at all, in order that the provisions of sec. 37, and the general purposes of the Act, might be complied with.

In short, when any claim is ripe for action, and the defendants fail to pay or settle it, an action lies, and in that action all claims, whether then payable or not, are to be dealt with at the trial, as provided for in sec. 37.

*Appeal dismissed with costs.*

SECOND DIVISIONAL COURT.

DECEMBER 7TH, 1917.

LAPOINTE v. ABITIBI POWER AND PAPER CO.

*Water—Navigable River—Obstruction by Logs—Public Nuisance—Right of Traveller to Abate—Aggravation of Nuisance by Plaintiff—Loss Occasioned to Plaintiff not Recoverable—Unlawful Obstruction—Navigable Waters Protection Act, R.S.C. 1906 ch. 115, sec. 4—Question not Raised until Argument of Appeal.*

Appeal by the defendants from the judgment of LATCHFORD, J., 12 O.W.N. 329.

The appeal was heard by MEREDITH, C.J.C.P., LENNOX, J., FERGUSON, J.A., and ROSE, J.

G. H. Kilmer, K.C., for the appellants.

A. G. Slaght, for the plaintiff, respondent.

MEREDITH, C.J.C.P., read a judgment in which he said that the two main questions involved in the appeal were: whether the defendants had created in a highway a public nuisance which the plaintiff had a right to abate; and, if so, whether what the plaintiff did was a lawful abatement of the nuisance.

The finding of the trial Judge against the defendants upon the first question was right—the defendants' obstructions of the navigable waters of the river and lake were entirely selfish and unreasonable and unauthorised by law, even assuming that they had some right to "boom-dam" navigable waters.

The case was a plain one of a public nuisance created by the defendants in a highway, in holding logs for about three weeks at the mouth of the river, obstructing navigation—a nuisance