

Rainy Lake, watering its logs in that lake and its tributaries in common with the logs of other lumbermen, all of which mixed together floated down the lake, over the falls and into the Rainy River. At this point if uninterfered with the logs would have distributed themselves over the whole river on their way down, although probably the greater proportion would have been carried by the current towards the southerly side of where is now the plaintiffs' boom, but the sheer boom caused all the logs to pass to the south of and inside the main boom, thereby preventing a substantial portion of them floating down (which they otherwise would have done) in Canadian waters along the north side of the boom. The lumber company being prepared to separate its logs from the rest objected to the boom company handling or in any way interfering with them. The boom company, however, at the westerly end of its works required to separate the logs of the Rat Portage Lumber Company from those of the other mill owners and did so, by allowing, during the years 1906 and 1907, all the logs except those of the Rat Portage Company to pass unsorted through the sluiceways, each company, including the defendant company, separating its logs from the others as they floated down the river after having passed the westerly end of the plaintiffs' works. The Rat Portage Company's logs thus separated amounted to about one-third of the whole quantity, and the only service rendered to the defendant lumber company by the works and operations of the boom company in respect of the logs of 1906 and 1907 was this separation of the Rat Portage Lumber Company's logs from the rest of the logs. There is no evidence shewing that the plaintiffs' works and operations benefited the defendants by preventing the logs of 1906 and 1907 coming to the defendants' works in undesirable quantities. There is a conflict of testimony as to whether the boom company sorted the logs of 1906 and 1907 into separate pockets for the respective owners, but I accept Mr. Matthiew's evidence that the only sortation was in respect of the Rat Portage Lumber Company's logs. The extent, however, of the sortation does not determine the question of liability, but merely goes to that of damages, if any, to which the boom company may be entitled.

The Boom Company rests its right to payment for whatever services it may have rendered to the lumber company on two grounds: first implied contract; and, second,