

stored above dams of their own on the east branch. At this time, Pulp Wood Company's dam on the west branch, completed on the 22nd June, was holding back a large portion of the natural flow of the west branch. The plaintiffs brought a ship and a barge to be loaded in the bay; they arrived on the 13th July. The plaintiffs made a demand on Pulp Wood Company for delivery of water by the 17th July. Pulp Wood Company refused; the dam was not opened; the plaintiffs' logs remained in the creek; and the barge had to go away without a full load. It was for the time lost at Nipigon bay and for the time spent in procuring the completion of the cargo elsewhere that the plaintiffs claimed—attributing that loss of time to the failure of Pulp Wood Company to deliver the water pursuant to the demand.

But the mere facts that Pulp Wood Company had in storage a quantity of water which, if it had been released, would have enabled the plaintiffs to float their logs, and that Pulp Wood Company refused to release it, and that consequently the logs could not be floated, did not make that company liable in damages—it not being shewn that there would have been sufficient water if the company had not built the dam. The plaintiffs' case, therefore, failed.

The action should be dismissed, without prejudice to any claim which the plaintiffs might have against Pulp Wood Company under the statute in respect of the matters set forth in para. 7 of the statement of claim. Pulp Wood Company should have judgment against the plaintiffs for \$444.72 in respect of the claims set forth in paras. 5 and 7 of the prayer of the counterclaim; the remainder of the counterclaim should be dismissed, without prejudice to any proceedings under the statute in respect of paras. 1, 2, 3, and 6.

The plaintiffs should pay to both defendants the costs of the action; but there should be no costs of the counterclaim to either party thereto.

SUTHERLAND, J., IN CHAMBERS.

FEBRUARY 7TH, 1919.

REX v. WATSON.

Criminal Law—Making Statements Tending to Weaken Effort in Prosecution of War—"Publicly Express"—War Measures Act, 1914—Order in Council of 16th April, 1918—Magistrate's Conviction—Stated Case—Evidence—Statements Made in Factory by Workman to Co-workers.

Case stated by one of the Police Magistrates for the City of Toronto.