

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J. EX., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

I. F. Hellmuth, K.C., and Bartlett, for the plaintiffs, appellants.

A. W. Anglin, K.C., and Glyn Osler, for the defendants.

HON. SIR WM. MULOCK, C.J. EX.:—This case was tried along with that of the *Rainy River Navigation Co. v. Ontario & Minnesota Power Co.*, and evidence common to both actions may be found in the evidence, and, in my judgment, in that case, and it is sufficient to refer here to only such portions of the evidence as are material to the question here under consideration.

The Rainy River from Fort Frances to its mouth is an international stream, and lies along the boundary line between Canada and the United States. The citizens of each country are entitled to free, uninterrupted navigation throughout the whole length of the river. On the 18th June, 1911, the steamer "Aguinda" owned by the plaintiff company left for the village of Rainy River, proceeding upstream towards Fort Frances. On reaching a point called Hannoford Bar, further progress was stopped by a boom stretching completely across the river from one shore to the other. The defendants' men were in charge of the boom, and when asked by the captain to permit the "Aguinda" to pass through, they declined. Thereupon the captain proceeded down the river to the company's office, some three miles away, and learned that the foreman, who apparently was in charge of the men, had gone upstream. After further search he was found, and finally consented to open the boom and allow the vessel to pass through.

The detention caused by this obstruction extended for a period of about three and one-half hours. On the 20th of June, when coming down stream, the vessel was again delayed by the boom for about one-half an hour. On the 23rd of June she was again obstructed by the boom for a period of from one-half to three-quarters of an hour. On the 25th of June there was a similar delay.

The defendants had erected some stone piers in the river in connection with the boom, whereby they could make