

and securing its logs as they floated down the river. This boom was in existence and in effective condition in the years 1906 and 1907, and was then sufficient to enable the boom company to separate from the logs of other persons all its own logs as they floated down the river and to take proper care of them.

The Rainy River commences at the foot of Rainy Lake, being separated therefrom by the International Falls, and flows westerly some 80 miles into the Lake of the Woods. Throughout its whole length it is a navigable river, floatable for logs from shore to shore, and is several hundred feet wide with a current of from two to three miles an hour, and its floatable character was not improved by the boom company's works.

A number of lumber companies, including the defendant company, conduct lumber operations on the upper waters contributory to the Rainy River, floating their cuts of logs down to their respective mills, situate along the river bank. Their practice was to cut logs in the winter and haul them on the ice. Then in the spring the logs mixed together and floated down the river towards the mills, each mill having certain boom accommodations of its own. One of these companies is the Rat Portage Lumber Company, which owns two mills; one of them being situate higher up the river than are those of the defendant company, and other of the mill owners. Its other mill is at Kenora at the foot of the Lake of the Woods. At the westerly end of the boom company's boom it is necessary to separate the logs of the Rat Portage Lumber Company from those of the other owners operating lower down the river.

The Rat Portage Lumber Company controls the Boom Company and it would seem that the original object for which the latter's boom was constructed was to enable the Rat Portage Lumber Company to separate its logs from those of other companies.

The Rainy river runs between the province of Ontario and the State of Minnesota, and under the Ashburton Treaty it is established as an international river, and its thalweg constitutes the boundary line along its course between Canada and the United States.

The lumber company erected its mills and booms in the year 1904, and in the years 1906 and 1907, continued lumbering operations on its limits in the vicinity of