

# NEW TRIAL GRANTED IN MACHINERY CASE

Judge Dibell has granted a new trial in the case of the S. L. Boutin Fish company against Hyman Y. Josephs, Max Zalk and Louis Zalk, doing business as the Duluth Machinery company. A verdict in favor of the defendants had been awarded for \$895.43.

The fish company officials claimed that they had ordered a marine steam engine and fittings for a tug boat from the machinery concern and that delay in getting the proper equipment had a loss in business amounting to \$1,820. They also claimed that the boiler sold them would not pass government inspection and they asked judgment for \$1,286.14.

The machinery dealers alleged that the order had been filled on time and the equipment accepted. It was no fault of theirs that the machinery would not pass inspection, they claimed, as the tug owners had never given them certain specifications for having a boiler and fittings built that would come up to federal requirements. They asked the court to award them an amount still due on the transaction.

In granting the new trial Judge Dibell made the following memorandum:

"The case presents many difficulties to a satisfactory trial. Upon a review of the evidence I find I committed an error in directing a verdict. There were some questions of fact that should have been submitted to the jury under proper instructions. Just what form these should have taken are not worth while now to discuss."