

factory, which had existed before their rope work. That finding in law was necessarily fatal to the respondents' claim for damages, which was based upon the assumption that they had a preferential right to their stipulated quantity of water-power. The learned Judge further held, in point of fact, that the short supply actually received by the respondents was due partly to *force majeure*, or in other words to the low state of the river, aggravated by the disrepair of the dam, from natural causes beyond the control of the appellants, and partly to their defective machinery.

On appeal, the Court of Queen's Bench, consisting of Sir Alexander Lacoste, C.J., with Baby, Bossé, Blanchet and Hall, JJ., unanimously reversed the decision of the Superior Court; granted a declaration and injunction to the effect craved by the respondents; and also gave them decree for \$1,000, being the full amount of the damages which they claimed. The reasons for the judgment of the Appeal Court were fully rendered by Mr. Justice Hall.<sup>1</sup>

Their lordships have not found the questions of law, which were raised and discussed by the appellants, in the course of the argument addressed to them, to be attended with difficulty. The fact that the North River may be in some sense navigable, cannot prevent a riparian owner from acquiring an interest in its water-power, which he can sell along with and as appurtenant to a parcel of his land. Even if the appellants had been unable, as they say they were, to give the respondents a good title as against the public, the law would not have permitted them first to sell a prior right to the water-power, and pocket the price, and then to pose as members of the public, and to deprive their purchaser of the water, by using it themselves.

Again, their lordships see no reason to doubt that, in a question with the appellants, or any one who has derived an interest from them since April, 1886, the respondents have a preferable right to take water from the reservoir in question, to the extent of 100 horse-power. The deeds of sale are in terms absolute; they do not contain any reservation to the sellers to take a supply of water-power, either in priority to, or *pari passu* with, the purchaser; and they are granted with full warranty against eviction. The warranty imports that the purchaser, and his successors in title shall not be hindered by any one in the exer-

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<sup>1</sup> See R. J. Q., 2 B. R., pp. 537-543.