Edw. VII. ch. 139, an agreement dated the 9th January, 1905, made between His Majesty, represented by the Commissioner of Crown Lands for the Province of Ontario, and Edward Wellington Backus and "those associated with him," and an Act of the Legislature of Ontario, 6 Edw. VII. ch. 132.

The defendants do not plead either of these statutes or this agreement as a defence to the action, and the only reference to their powers is contained in the first paragraph of the statement of claim, in which it is stated that they are an incorporated company under letters patent dated the 13th January, 1905, under the Ontario Companies Act, and that "part of their building operations required the erection of a dam across the Rainy river at a point between the town of Fort Francis and the town of International Falls, Minnesota."

At the trial four questions were left to the jury, viz.:—

1. Was the water of the plaintiff's intake pipe on Rainy river lower than usual from the 21st April to the 17th May, 1909?

2. If it was, was it caused by the defendants' dam and works between Fort Francis and International Falls?

3. Could the defendants have avoided the lowness of water; if so, how?

4. What damage did the plaintiff sustain, if any?

The jury answered the first and second questions in the affirmative; to the third question they answered, "Yes, by building coffer-dams in order to prevent the back flow of water while clearing out the tail race;" and they assessed the damages at $390.

It would appear from the shorthand notes of the proceedings at the trial that counsel for the defendants made no attempt to justify the defendants' action under the Dominion statute, but relied mainly on the objection that the plaintiff had not proved that he was a riparian owner; but, as was contended, had admitted that he was not, though the letters patent incorporating the defendants and the agreement of the 9th June, 1909, were put in, and, judging from what was said by the learned District Court Judge in delivering judgment, were relied on as an answer to the action.

Since the argument, the plaintiff has, pursuant to leave, put in the letters patent of his land; and it is now clear that he is a riparian owner, and that what he referred to in his testimony as a road allowance along the river bank is not a road allowance, but a reservation of the "right to use so much of the banks not exceeding one chain in depth from the water's edge as may be necessary for fishery purposes."