let by the appellants to one Hambleton, who continued to be their tenant until 1890, and, during his occupation, derived his motive power from the same source. The water supply does not appear to have ever been used for any manufactory other than these three.

The present suit was brought by the respondents, in September, 1888, before the Superior Court. In their writ and declaration, they alleged that for years past the supply of water had generally been sufficient, at all seasons of the year, to furnish the amount of water-power to which they were entitled under their conveyances from the appellants; but that, during several seasons of drought, whilst the whole supply obtainable was about, or even less than, 100 horse-power, more than half of it had been wrongfully appropriated and used by the appellants and their tenant; and they claimed (1) a declaration that they were entitled to a supply of 100 horse-power in priority to the appellants or their tenant; (2) an injunction against interference with their preferable right; and (3) decree for $1,000 as damages in respect of their having been deprived of that right.

In answer to these claims, the appellants put forward a great variety of defences, of which it will be sufficient to state the substance. They pleaded, in bar of the action, that, the North River being navigable, its water could not be the subject of commerce; that, according to the spirit and sense of the deeds of sale, the respondents' right to 100 horse-power was not preferential, but without prejudice to the appellants' right to use the water for their factory; and that, according to law, the first use of the water belonged to the appellants as the oldest manufacturers. In answer to the respondents' pecuniary claim they pleaded that if the respondents had suffered damage, it was not due to any act or default of theirs, but was occasioned by the necessity of repairing injuries to the dam from ice or floods, or by defects in the respondents' machinery and arrangements for using the water.

The case went to trial, on these pleadings, before the Honourable Judge Taschereau, who, after a voluminous proof had been led by both parties, sustained the defence, and dismissed the suit with costs. The learned Judge held in effect, that, according to the legal construction of the deeds, the respondents had acquired nothing more than a right to take water representing 100 horse-power from the reservoir, if and when it was possible to do so, without affecting the supply of water required for the appellants'