The appeals were heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

D. L. McCarthy, K.C., for the appellants.

Edward Bayly, K.C., for the Attorney-General.

I. F. Hellmuth, K.C., for the defendants the Hydro-Electric Power Commission of Ontario.

HODGINS, J.A., reading the judgment of the Court, said that the plaintiffs, by the endorsement of the writ, claimed: (1) a declaration that the defendants the Commission had no right to divert water from the Niagara and Welland rivers, notwithstanding the powers in that regard granted them by an Act respecting the Public Development of Water Power in the vicinity of Niagara Falls, 1916, 6 Geo. V. ch. 20, and the Water Powers Regulation Act, 1916, 6 Geo. V. ch. 21, and that the Lieutenant-Governor in Council had no power to authorise them to do so; or (2) a declaration that the covenants in paras. 16 and 20 of the agreement between the Queen Victoria Niagara Falls Park Commissioners and the appellants' assignors were binding on the Lieutenant-Governor in Council, notwithstanding the two statutes. An injunction was also asked against the Commission.

The Attorney-General may be a proper party to certain proceedings against or affecting the Crown: Dyson v. Attorney-General, [1911] 1 K.B. 410, [1912] 1 Ch. 156; but there is no case which forms any authority for the present proceeding—any sort of justification for the proposition that the Lieutenant-Governor in Council can be controlled or directed by the Court or be declared bound by covenants in an agreement. That being so, naming the Attorney-General as a party is futile. That rights of the Crown, both direct and indirect, may be dealt with in an action framed in that way, is established by the Dyson and other cases. But this is not one of those rights. The argument is, that this Court is entitled and bound to make a declaration which shall tie the hands of the Executive of the Province, and define exactly the limits within which it can act. The practical results of such an experiment would be rather perplexing. The course here proposed is an impossible one: Murdock v. Kilgour (1915), 33 O.L.R. 412; Re Massey Manufacturing Co. (1886), 11 O.R. 444, 465, per Cameron, C.J.; Church v. Middlemiss (1877), 21 L.C. Jur. 319; Liquidator of the Maritime Bank v. Receiver-General (1889), 20 S.C.R. 695; Re Trent Valley Canal (1886), 11 O.R. 687, 699; The King v. The Governor of the State of South Australia (1907), 4 Commonwealth L.R. 1497; Com-