

“ North River, and now in use to run their manufacture, said water power to be taken at a place convenient to run the wheels and machinery to be placed by said purchaser in his rope manufacture on the hereby bargained and sold piece or parcel of land.” The sale and conveyance were made, with “ promise of warranty against all troubles and hindrances generally whatsoever ; ” and it was agreed that the purchaser should have the option, at any time within five years, of acquiring any additional quantity of water power, not exceeding fifty horse-power, which might be required in connection with the water-power already sold, at the price of \$25 for each additional horse-power.

The following condition, which is of some importance in this case, was inserted in this deed of sale : — “ It is hereby further agreed by and between the said parties that should any accident or leakage happen to the dam of said vendors across said North River, or that said dam should require to be repaired from any cause or reason, the said purchaser or legal representatives shall have no right whatever of claiming any damages from said vendors for any loss of time or losses caused by such accident to said dam, or that it require repairing provided that the said dam be repaired or fixed in the course of the time reasonable and required for such repairs, during which time the said vendors shall have the privilege of withdrawing the supply of water from said purchaser, if absolutely necessary.”

In pursuance of the option reserved to him by the deed of 1881, the late Robert Bannerman, on the 2nd April, 1886, obtained from the appellants a deed conveying to him an additional quantity of water from the dam, equivalent to fifty horse-power, to be held and used by him and his successors, in connection with, and upon the same terms and conditions as the supply he had already purchased.

Robert Bannerman, immediately after his acquisition of the land, established a rope work upon it, which continued in operation, at least until the date of this action. Upon his death in July, 1887, his interest in the land and water-power connected with it passed to the respondents in this appeal. Before the date of the first sale to Bannerman, the appellants had erected, and they have since maintained and worked a woollen factory on the north side of the river, the machinery being driven by water-power from the dam. In the year 1883, a bobbin factory on the north bank of the river, a little way above their own works, was