

worth developing into electric energy. After months of investigation and surveys he concluded that if he could acquire the right to divert the course of the river at the head of Ecarté Rapids, and to lead the waters along a level to a point a half mile below Kakabeka Falls the combined fall of the rapids and the falls could be concentrated in one place. With this right, and also with the right to regulate the flow of water out of Dog Lake and Shebaudowan Lake, assuring water in winter and in dry times—if these rights could be secured, a feasible and valuable water power could be wrought out.

Mr. Jenison, setting forth upon this design, bought all the needed private lands, with the exception of a few acres of Mining Location 10-x, across which it was necessary for his projected canal to pass. These few needed acres he also sought to purchase, but the price asked was \$60,000. (At a later date the award made in proceedings for expropriation was only \$1,390.) Mr. Jenison also needed some of the chain reserve along both sides of the river and around the lakes. By contract with the Crown Lands Department in April, 1896, Mr. Jenison obtained the right to use those needed lands.

Mr. Jenison was still without the right to cross the land in Mining Location 10-x, and now had recourse to the statutes: Chapter 141, Sec. 2 (1) R. G. O. 97—that is, "The Water Privileges Act"—reads as follows: "Any person desiring to use or improve any water privilege, of which, *or a part of which*, he is at such time the legal owner or occupant, for any mechanical, manufacturing, milling, or hydraulic purposes, by erecting a dam and creating a pond of water, increasing the head of water in any existing pond, or extending the area thereof, diverting the waters of any stream, pond, or lake into any other channel or channels, constructing any race-way, or other erection of work in connection with the improvement and use of said privilege, or by altering, renewing, extending, improving, repairing, or maintaining any such dam, raceway, erection, or work, or any part thereof, shall have the right to enter upon any lands," etc.

"2. If, upon application to the County Judge, as hereinafter provided, such person obtains authority, he shall be at liberty to take, acquire, hold, and use such portions of said lands so examined as he may deem expedient for the completion, improvement, or maintenance of the water privilege and works in connections with the same."

With this statute in hand, with possession of both ends of this water privilege (that phrase actually meaning all the water privilege save a very small part) Mr. Jenison made application to the County Judge, and, after a long and exhaustive trial, with the Kakabeka Company as defendants, the Judge granted the order in compliance with the meaning of the statutes, as construed by him and by Mr. Jenison.

But the Kakabeka Company appealed, and the order of the County Judge was annulled on the ground that the water privilege was being extended, not improved. In vain Mr. Jenison cited the language of the statute—namely, "of which, *or a part of which*, he is at such time the owner." This test, to Mr. Jenison, seemed