

On the 27th November, 1897, the company entered into a contract with the Commissioners, acting as before, and the Niagara Falls Park and River Railway Co., approved by the Lieutenant-Governor in council on the 9th December, 1897.

The Ontario Act 62 Vict. (2) ch. 11 (1st April, 1899), by secs. 35 and 36, permitted the Commissioners to get rid of the restrictions of the agreement of 1892, and to enter into agreements with persons and to take water from the Niagara and Welland rivers for the purposes of enabling such persons, etc., "to generate electricity," etc.

The agreement in question in this action was entered into on the 15th July, 1899, between the Commissioners, acting as before, and the defendants.

Clause 2 is as follows: "The said agreement of the 7th April, 1892, in respect of the amount of rentals and period for which the same is payable, is hereby amended by providing that from and after the 1st day of May, 1899, the rent payable under the said agreement, in lieu of that specified in paragraph 4 thereof, shall be up to the 1st day of May, 1949, the sum of \$15,000 per annum, payable half-yearly on the same days and times as specified in said paragraph 4 of said agreement, and, in addition thereto, payment at the rate of the sum of \$1 per annum for each electrical horse power generated and used and sold or disposed of over 10,000 electrical horse power up to 20,000 electrical horse power, and the further payment of the sum of 75 cents for each electrical horse power generated and used and sold or disposed of over 20,000 electrical horse power up to 30,000 electrical horse power, and the further payment of the sum of 50 cents for each electrical horse power generated and used and sold or disposed of over 30,000 electrical horse power; that is to say, by way of example, that on generation and use and sale or disposal of 30,000 electrical horse power, the gross rental shall be \$32,500 per annum payable half-yearly, and so on in case of further development as above provided, and that such rates shall apply to power supplied or used either in Canada or the United States. Such additional rentals as shall be payable for and from such generation and sale or other disposition as aforesaid to the Commissioners shall be payable half-yearly, at the rate above specified, on the 1st days of November and May in each year for all power sold in the said several half-yearly periods from the day of sale; and, within 10 days after said 1st days of November and May in each year on which such additional rentals shall be payable respectively, the treasurer, or, if no treasurer, the head officer of the company, shall deliver to the Commissioners a verified statement of the electrical horse power generated