new leases, and, under the agreement of 20th January, 1880, they for many years shared equally in the rentals derived from this source. Recently, this saw-mill being in the market, defendants acquired it. They now assert a right, without paying rental therefor, and regardless of the effect of such use upon the sufficiency of the supply of water for the requirements of plaintiffs' grist mill, to take from the dam, in order to run their newly acquired property, with larger wheels and increased power, and for purposes other than a saw-mill, such quantity of water as they require for the uses to which they are putting it. Defendants in effect say that, as tenants in common of the dam and other privileges, they are entitled to use "for their own purposes" as much of the water stored by the dam as they require. Plaintiffs maintain that the rights of the parties are restricted to the use of so much water as may be required to run their respective grist mills—and that the right to use surplus waters not required for these purposes must be disposed of for the joint and equal benefit of both parties, pursuant to the agreement of 20th January, 1880.

The evidence satisfies me that defendants have not restricted themselves to the use of the surplus waters for their newly acquired mill, but they have in fact, for this purpose, drawn off waters which were required for plaintiffs' grist mill, and that in so doing they have also used more than one-half of the waters stored by the dam. In these circumstances, I have to determine the rights of the parties in the premises.

If these rights have been the subject of adjustment by contract between the parties, or are defined by the documents creating them, it is upon the construction of these instruments that their extent and scope must depend. In such construction it is proper to take into account the surrounding circumstances existing at the time the grants and contracts were made: Douglas v. Whittemore, 32 Vt. 685; Lindeman v. Lindsay, 69 Pa. 93, 99.

The predecessors in title of plaintiffs and defendants acquired their respective rights by the conveyances from their common grantor. By the agreement of 20th January they, at least in part, expressed their understanding of these rights. The authorities are uniform that a construction of a grant of a water power which will restrict the grantee to the specific use to which the water was applied when the grant was made, will not be adopted unless the language of the grant unmistakably indicates such to have been the intention of the parties: Hines v. Robinson, 57 Me. 324; Ferry v. Smith, 47 Hun 333; Fowler v. King, 71 N. H. 388; Angell