

An action by the Attorney-General for the Province of Ontario and the Commissioners for the Queen Victoria Niagara Falls Park against the Electrical Development Company Limited and the Toronto Power Company Limited, to recover: (1) arrears of rental due by the defendants according to the plaintiff's construction of a certain agreement of the 29th January, 1903, between the Park Commissioners and William Mackenzie and others (called "The Syndicate"); (2) damages by reason of the taking of more water by the defendants than was authorised by the grant in the agreement, according to the plaintiffs' interpretation thereof; (3) an injunction restraining the defendants from taking water in excess of the grant; and (4) a declaration that a certain agreement between the two defendants was within the prohibition of clause 25 of the agreement of 1903, and consequential relief. There was a counterclaim by the defendant the Electrical Development Company Limited for a declaration of its rights as to the use of the water under the grant and a declaration that the defendants' plant as constructed was such as they were entitled to construct and use under the agreement.

The action and counterclaim were tried without a jury at a Toronto sittings.

G. H. Kilmer, K.C., and Christopher C. Robinson, for the plaintiffs.

H. J. Scott, K.C., D. L. McCarthy, K.C., and A. W. Anglin, K.C., for the defendants.

MIDDLETON, J., in a written judgment, referred to the Ontario enactment 62 Vict. (2) ch. 11, sec. 36, by which the Commissioners, with the approval of the Government, were empowered to enter into an agreement with any person or company to take water from the Niagara river, within the limits of the park, for the purpose of generating electricity etc., upon such terms and conditions as might be embodied in the agreement. Pursuant to this power, by the agreement of 1903, the Commissioners granted to the Syndicate "a license irrevocable to take from the waters of the river, within the park, a sufficient quantity of water to develop 125,000 electrical or pneumatic or other horse power for commercial use."

By clause 14 of the agreement, the license was granted for a term of 50 years from the 1st February, 1903, with certain rights of renewal, the Syndicate paying therefor a clear yearly rental of \$15,000, and an additional sum "for each electrical horse power generated and used and sold or disposed of over 10,000 electrical horse power."