

UNIVERSITY OF BUFFALO  
DEPARTMENT OF LAW  
BUFFALO, NEW YORK

CARLOS C. ALDEN  
DEAN

June 11th, 1914.

Peter Flint, Esq.,  
Counsellor at Law,  
140 Nassau St., New York City.

Dear Mr. Flint:-

I was in Albany Tuesday last before some of the Public Service Commissioners, and happening to drop in for a moment to see Mr. Lodge, was surprised to learn that you were intending to start an action, in the name of Mr. Runge, but purporting to sue on behalf of all riparian owners, to compel a restoration of the dam. I also saw the affidavit which you had prepared on what you wrote was to be an application for a temporary mandatory injunction order.

I was so thoroughly satisfied that your proposed action, as framed, would be ill-advised, and might result in seriously imperiling our rights in the matter, that I went from Albany to New York, and had a conference with Mr. Moran of counsel for the Farmers' Loan & Trust Co. We discussed the situation carefully, and are in accord upon the proposition the ground of action is an injunction to restrain interference with the implied easement created by Mr. Harris while owner of the dam lot. In such an action we also agree that the Farmers Loan & Trust Co., as exec'r, is the best party plaintiff. Mr. Moran promises to advise the commencement of such an action, but naturally wants us to submit names of witnesses, and character of testimony we can produce to support the case. That can be forthcoming, as soon as we get to the lake and talk the matter over.

The present restoration of the dam will not avail to restore the former level for this summer. This assumes that you could get such an order as you seek, which I am reasonably certain you could not get. The theory of prescriptive right to a certain water level, from lapse of time, is, I think, an untenable one, under any facts with which I am familiar.

In the light of the above, I urge you to abandon for the present taking any step in the proposed Runge action.

It is not impossible or improbable that an interview which I will hope to have with the owners of the dam lot, as soon as I get to the lake, may result in their being willing to restore the dam if we will agree to waive such damages as will accrue to us during the coming summer.

My belief is, that we can win, but not on the lines sketched out by you (if I understand them).

Yours truly,