

previous to the sale to the defendant. He says they had a seven-foot head when they put the splashboards on, and that they put them on during part of each year to hold the spring freshet as long as they could. During three springs they operated the grist and saw mill for about six weeks, beginning about the end of March.

W. A. McColl, who worked for Powel in the old saw mill in 1881, 1882, and 1883, says that it and the grist mill were then both run by water, and that it depended on the season how long they could run. In 1881 they shut down on the 15th July; in 1882 on the 30th of June; in 1883 on the 13th of June. Just how he recalled these exact dates does not appear. This, however, corresponds with the testimony of David Breckenbridge as to 1909, 1910, and 1911, that they used water till the middle of July, sometimes the 1st of July and perhaps middle of June; and in a wet fall they might have water again.

It is to be noted that in July 1909, 1910, and 1911, there was a comparatively heavy rainfall. As to the period of about twenty years ago, the defendant testifies that from 1885 to 1901, both mills were operated at the same time in the spring of the year, that that was so in Powel's time, and that in 1900 they lacked water for seven or eight months instead of for two or three months, so they put in steam.

McGrath says he often saw the water running over the top of dam during the spring freshets, April and May.

Roach went to work for Read in 1893 on what is now Cardwell's farm, and says the land would be wet in the spring and then dry off.

David Breckenbridge says the water was seldom up to the top in summer times.

Matthew Breckenbridge testified that in normal conditions—i.e., when the water was three inches below the top of the embankment—the water would not touch Fitzpatrick's, Gorvey's, or Benjamin Cardwell's lands, except, as to the latter, just above the grist mill; and that the months in which normal conditions existed were part of March, April, May, sometimes June and July; big rains would fill the pond up at any time.

The defendant, who says he knows of no appreciable difference in the dam between 1854 and the present time, added "the timber will decay, especially a dam where the water runs out every summer." Various witnesses spoke of the