

Dealing first with what is called the "north pier." . . . James F. Serrex, who was in Ellis Burrell's employment prior to 1867, said that in the spring of that year the dam across the river, and a pier above the south end of the dam, were swept away by freshets. He said that, prior to the destruction of the dam, some cribbing was placed out from the bank of the river, as a retaining wall, to prevent the earth from being carried away from the bank into the river, during high water. This crib-work, built out 14 or 16 feet into the river, was known as "the fire-stand," or north pier.

. . . Mr. Baker stated that the fire-stand had been altered a great many times by pieces being carried off from the end by the spring freshets, and if injured by the freshets of 1878 and repaired in that year, no appreciable extension was made to it. . . . I am, however, satisfied, and I so find, that it was not until 1887, after the fire-stand was injured by the freshet, and upon its being rebuilt, that it was extended to its present length into the river. . . . In 1885 the defendant became the owner in fee of the premises he now occupies, and in 1887 he was tenant of that portion owned by the plaintiff, so that, when the fire-stand was extended to its present position in the latter year, the defendant was in occupation of the whole property. . . . Even had I found that the extension to the north pier was made in 1878, and therefore existed in practically its present condition when the defendant became the purchaser of his present premises, he could not claim a right of way over the plaintiff's land to make repairs to the dam and pier, unless it was a right of way occupied and enjoyed at that time as appurtenant to the premises. The 12-foot lane was designed as the way by which repairs could be made to the dam. The dam is west of the line of the plaintiff's foundry, which forms the eastern boundary of the lane, and the plaintiff, under the devise to him, is charged with one-third of the cost of keeping the dam in repair, with right of entry to repair. . . . As the pier did not exist in its present condition when the defendant purchased in 1885, nor did the pier then existing produce the beneficial effects which it is claimed are produced by the existing pier, the defendant cannot claim a right to repair it so as to keep it extended to its present position in the river. . . . The channel through which the water flows which propels the wheels under the plaintiff's foundry and the defendant's factory is an artificial one, and where that is the case "any right to the flow of the water rests on some grant or arrangement, either proved or presumed, from or with the owners of the