

On the morning of Sunday the 1st September, 1912, as the statement of claim alleges, the water from this mill-pond overflowed its banks and "ran to and overflowed" the appellant's lots, causing injury to it and to the house and damage to his furniture and some other personal property.

The appellant bases his claim upon two grounds: (1) a breach of the duty which he contends rested on the respondent to take such precautions as would have prevented the waters of the mill-pond from escaping and doing damage to others; (2) negligence of the respondent in the management of the flood-gates and in failing to control the flow of the water so as to prevent its doing damage to others.

The evidence as to the main question involved was not contradictory and the learned Judge, upon a full consideration of it, came to the conclusion that the negligence charged had not been proved; and with that conclusion we agree.

It is not open to question that during the day upon which the appellant's lot was flooded, and part of the previous night, there had been very heavy rains, which caused the waters of the stream to rise; and it is a fair conclusion upon the evidence that, when the mill was shut down about six o'clock on the previous Saturday evening, for want of sufficient water to run it, there was no reason to apprehend any abnormal rise in the height of the water, and nothing to suggest that exceptional precautions would be necessary to prevent the banks of the mill-pond being overflowed or to prevent damage being done to the appellant's property.

The evidence preponderates strongly against the view that there was any negligence on the part of the respondent's servants in the way in which the flood-gates were operated, when it was discovered that, owing to the rise in the height of the water and the volume of it that was coming down the stream, it was necessary for the preservation of the dam that the flood-gates should be opened. The immediate object of the respondent's servants in opening the flood-gates was, no doubt, to prevent the loss to their employer which would have resulted from the dam being swept away; but the evidence establishes beyond doubt, we think, that, had the dam been carried away, greater damage would have been done to the respondent's property than was occasioned by the opening of the flood-gates.

It was contended by the appellant's counsel that the flood-gates should have been opened when the mill was shut down on Saturday; but there was, as I have said, nothing to indicate that it was necessary that that should be done; and the result of doing it,