

Trial—Anglin, J.]

[Jan. 31.]

CALEDONIA MILLING CO. v. SHIRRA MILLING CO.

*Watercourses—Grant of water power—Construction—Specific use—"Their own purposes"—"Surplus water."*

The plaintiffs and defendants were respectively the owners of grist mills and were each seised in fee of an undivided half of a dam on a river, and both had the right, by an agreement between their predecessors in title, made in 1880, to draw water therefrom "for their own purposes." The agreement provided for the maintenance and repair of the dam at the joint and equal expense of the parties, and that both should be equally interested in rents derived from supplying water to others. For many years the parties and their predecessors had used the waters stored by the dam as they required them. The owner of a saw-mill above the defendants' grist mill had, under a lease from the common grantor of the plaintiffs and defendants, the right to use "surplus waters" stored by the dam and not required by the grist mills. This right was continued by the separate owners of the grist mills; and the plaintiffs and defendants, under the agreement, shared equally in the rents. Shortly before this action was begun, the defendants became the owners of the saw-mill.

*Held*, that a construction of a grant of a water power which will restrict the grantee to the specific use to which the water was applied when the grant was made, will not be adopted, unless the language of the grant unmistakably indicates such to have been the intention of the parties.

*Held*, upon the documents and evidence, that each party had an absolute right to use, in a reasonable manner, for their own purposes, so much of the dammed water as might properly be used for generating power as they required, not exceeding one-half of the whole, and so much of the remaining water, which might be properly so used, as would not interfere with or impair the user in a reasonable manner by the other party of the water to which he was entitled, and which he from time to time required.

"Their own purposes" meant any lawful uses to which the water might reasonably be put in a business owned and conducted by the party, as distinguished from a grant or lease to a third party of the right to use such water; and any water not required by either party "for their own purposes," thus defined, was "surplus water."

*Lynch-Staunton, K.C., and O'Heir*, for plaintiffs. *DuVernet and Arrell*, for defendants.