

dam. The use of these flashboards was, however, only intermittent. They were kept up only during low water and not always then, especially for a considerable period after the steamboat disaster of 1881. The present action was begun on the 19th August, 1897, so that the prescription of twenty years claimed by defendants cannot be maintained.

Nor is plaintiff disentitled to relief on the ground of laches, acquiescence, or delay. All that can be alleged against him on this head is his delay in bringing his action. He complained from time to time, but was tardy in seeking redress. But mere lapse of time is no bar to an injunction sought to restrain the invasion of a legal right unless the legal right itself is barred: *Radenhurst v. Coate*, 6 Gr. 139; *Fullwood v. Fullwood*, 9 Ch. D. 176.

At the trial and in this Court it was strongly urged on behalf of defendants that the injury plaintiff suffered from back water was caused by an obstruction in the tail-race a short distance below his mill. The engineers, Wisner and Kennedy, speak of this obstruction as extending from a point 50 feet below plaintiff's mill to about 120 feet below the mill, and say that the back water does not rise above the obstruction until the water surface at defendants' dam at Springbank is raised by the flashboards 3.85 feet above the crest of the dam. This obstruction at its highest point is several inches above the level of the floor under plaintiff's wheel, and its effect is said to be to cause a pool of water to be retained immediately below the wheel. There is a conflict of testimony as to the origin and nature of this obstruction. Defendants claim that it has always been there, the digging of holes shewing that it is part of the original bed. Plaintiff, on the other hand, claims that it was caused by a land slide which was only partly cleaned out, and the experiments by his witnesses would go to establish this theory. So far as this may be material, the weight of evidence would appear to be on the side of the plaintiff. But, even if defendants' theory is correct, it would not be a complete answer to the action. They have no right to back the water up plaintiff's tail-race, even if it does not rise above and pass over this obstruction. The obstruction does not extend to the lower boundary of plaintiff's land, and he would still be entitled to bring an action to prevent defendants acquiring a prescriptive right to this flooding, even if it never passed over the obstruction or reached his wheel. At the most it would apply only to the quantum of damage, and not to the injunction or the right of action.

On the whole, I think the judgment appealed from is right and should be affirmed.