tude. But I cannot see that the plaintiffs, because they bought from Read, are debarred from claiming that the defendant has exceeded his rights. . . .

There is, to my mind, until after 1908, a great preponderance in favour of the view that the water was used regularly during the spring freshets up to a seven-foot head, and not after that, and again in the late fall and winter. . . .

In 1900, the defendant put in steam; and, between that time and 1908, David Breckenridge says, they did not use so much "continuous" water power. They abandoned steam in the saw-mill and went back to water power for both in 1908. From that time on the trouble dates.

It may be that the defendant did not use more water power, but, having abandoned steam—which his son David said he only used when there was not enough water—i.e., in the summer time—the use of the water was made more continuous, and included the summer months. The history of the years after 1908 shews that something had changed. . . .

It is . . . a question whether the temporary holding of the water for use of the mill in the summer, when there were occasional heavy rains, justifies or is a use similar to the holding of the water during the summer, when these rains occurred at a time enabling the defendant practically to continue the high water of the spring freshets, either by better management or by a tighter dam, in such a way as to overflow the lands of the plaintiffs. If so, the defendant can practically, during the summer, or at all events for a longer time than formerly, flood the plaintiffs' lands.

It may be said that, apart from the question of tightening, the systematic holding up of every increase of water during a dry season, and making use of every rainfall, while a much less lengthy process than during a wet season, is in its legal effect the same. That is, it is a user of the water so far as user can be had, having regard to the season. If so, can the fact that the rains occur immediately after the spring freshets cease, deprive the defendant of the right to use the rain water which happens opportunely to lengthen the spring user, if he has the right to use it if and when it occurs, after an interval? . . .

[Reference to Innes's Law of Easements, 7th ed., p. 57; Goddard, 7th ed., pp. 269, 346; Hall v. Swift, 4 Bing. N.C. 381; Angell on Watercourses; Hall v. Lund (1863), 1 H. & C. at p. 685; Gale on Easements, 8th ed., p. 139; Bechtel v. Street (1860), 20 U.C.R. 15.]

I see no reason . . . to quarrel with the statement of counsel for the defendant that a prescriptive right might be acquired