

accumulation of two days' water in summer escapes in twelve hours, that is to say, that the flow of the river by the sluice gate is four times more rapid than the natural flow of the river. Therefore, if the sluice be constantly passing 14 square inches of water, that is equal to 28 square inches instead of 14. Now will any one in his senses pretend that a river 20 feet wide and two and a half or three feet deep could be filled by 28 square inches of water, unless there was some stoppage in the flow, or that such a flow could, if uninterrupted, produce an effect on the neighbouring lands? It would be different if the flow was interrupted by another obstacle, but appellants are not liable for the failure to keep the river open according to the *procès verbal* constituting the river a discharge, and regulating the works to be kept up upon it.

It seems to us to be highly probable that the damage was due to the failure to keep the mouth of the river clear. It is evident that this flooding was not an ordinary occurrence. There were no complaints before in summer from below. But this question it is not essential to decide. It suffices to show that the theory of the plaintiff is untenable. Nevertheless, it may not be amiss to observe, that several of plaintiff's witnesses support this view, or at any rate throw doubts on plaintiff's theory. Ed. Labarre (p. 43) says:—"Je ne puis pas m'imaginer à une distance comme cela, et dans une secheresse comme cela, rien que la marche du moulin puisse mener tant d'eau pour mouiller tout son foin." Again, at page 48, he is asked:—

Q. "Vous dites donc que si la rivière était nettoyée comme il faut sur la terre du demandeur et dans la débouche dans la Baie Lavallière il n'y aurait pas d'inondation?"

R. "Il ne faut pas se tromper: la terre du demandeur est en débouche, il y a un peu de notre faute au public."

Q. "L'eau séjourne-t-elle, sur la terre du demandeur, parce que la débouche n'est pas nettoyée?"

R. "Il n'y pas d'autre chose, suivant moi. La rivière est bouchée, et quand l'eau est rendu là, elle se répand partout."

At page 49, the same witness tells us that having charge of the creek as syndic he had it

cleared nine years before, and that this is the first complaint in summer since. Benjamin Laroche fils, says (p. 105) that the river has "assez de chute," to run off all the water when the sluice is open and the mill running. This was in examination in chief, and though pressed again on the point he repeats the same thing. At p. 139, Joseph Mathieu, also in examination in chief, attributes the inundation to the absence of "débouche." At p. 167, Frs. Lemoine attributes the flood to the river not being "en ordre," and Paul Joly at page 199 thinks "qu'e l'eau devrait s'égoutter facilement, si la rivière était nettoyée." Again, Jean Baptiste Lemoine, speaking generally, said the mill did no damage below, to the great disgust of the counsel who was interrogating him. The whole proposition became so untenable, except by admitting that the river had not been kept clear according to law, that there was a faint attempt to show that the dam had "crevée," but this story, unlike the dam, would not hold water.

It seems to me, then, clear that the plaintiff has not made out his case. Having arrived at this conclusion it becomes unnecessary to lose time reading a volume of 158 pages of evidence. I have, however, read some of it, curious to see how so much could be said about so little, and if what I have not read contains no more matter that what I did read, it is not worth reading for any object. In addition to this, the factum sets at defiance a rule of practice which has been in force for nearly five years. It is ordered that "the case shall be printed on paper of eleven inches by eight inches and a half, the type to be small pica, leaded face," &c. The type is not "small pica, nor leaded face." The labourer is worthy of his hire, but he should earn it; and if lawyers are to be paid they should attend to their business.

We are, therefore, to reverse, with costs of the lowest action of the Superior Court, and without any costs for witnesses or for the factum in appeal. The case was unnecessarily evoked from the Circuit Court to the Superior Court, and we give costs only of the action as brought. The costs of the evidence will not be taxed at all as against the adverse party. The appellant will get his costs but