

every circumstance except the one. Slade did not see the Lobbs working, did not take particular notice of the dam till this summer, when he saw that a stick had been put on and splashboard above it; he cannot remember the dam before 1901, and cannot tell from whom he got his information as to when the stick was put on there.

It seems to me that if the dam had only been some five and a half feet high, as indicated in Exhibit 13 and as deposed to by Lobb—in, say, 1902, 1903, 1904, 1905, and 1906, or one foot nine and a half inches less than the present dam, there would have been complaint much earlier than 1912. In 1902 the rainfall was 29.37 inches; in 1904, 26.13; in 1906, 30.98; in 1909, 25.06; while in 1910, 1911, and 1912, it was 24.40, 25.11 and 27.66 respectively.

The snowfall was in those years as follows: 1902, 84.2; 1904, 78.7; 1906, 71.5; 1909, 81.5; 1910, 67.2; 1911, 60.9; 1912, 96.0.

Then again it would have been impossible for Mr. Walker to have got and worked with a seven-foot head, even with splashboards on, for they are only ten and a half inches, giving a total height of six feet four and a half inches; that is, assuming, as the evidence as these witnesses suggest, that there were splashboards over the disputed stick of timber.

Taking Lobb's evidence as to the top of the abutment shewn by Exhibit 14 to be 7.19 above water level below the dam, and if, as he says, the old dam was 27 inches below, that would make it that distance below, or something less than five feet.

Opposed to this evidence given on behalf of the plaintiff there is a very direct and circumstantial denial, by the defendant and his two sons as well as by others, that the dam was raised.

Added to this is the fact that the embankment to the west of the mill, extending one hundred and fifty yards from the saw mill, has not varied in point of height throughout, so far as any witness has observed, since it was put there. The height of this embankment, at the points C. and D. on plan Exhibit 13, is given as 6.88 feet and 6.90 feet respectively; and as 99.70 on plan Exhibit 30, i.e., five inches higher than water level, 99.32, which is very close to the height of the dam as shewn on plan Exhibit 28, 99.27, 99.24, and 99.60—the latter point being farthest west.