

floated up to the stone-store, which is about 150 yards to 200 higher up the river than the wooden store, and between the last mentioned store and the mill.

The said river is not navigable during low water, that is to say, when the tide is out.

When the tide is in during neap tides, the river is navigable for bateaux and smaller craft as far up as the wooden store. During spring tides it is navigable as far up as the stone store. I have seen bateaux go up as far as the bridge, which is situated at the upper end of the mill, where it is bounded by the Queen's highway. I had occasion to visit the mill and premises in question during last summer on several occasions in or about the month of September or October last, I saw some men whom I supposed to be in the employ of the Defendant, engaged in building a wharf, on the river in question at some distance below the mill in question. Within the last 3 years, a wharf has been built, commencing at the bridge and extending on Defendant's side of the river, the said wharf, is continued from the bridge down the river to a distance of about 200 feet from the bridge in almost a straight line. The said 200 feet now form the bank of the river inasmuch as it has been filled in with stone and earth.

The river is not now so wide as it was where the said 200 feet of a wharf has been built. The Defendant in building the said 200 feet of a wharf, has encroached on the natural bed of the river.

The wharf which I have already mentioned as having been constructed in the month of September or October last, is built and placed at the end or termination of the said 200 feet of wharf, the said wharf, that is to say, the one built in September or October last, having been joined to the 200 feet, forms an elbow and crosses the channel of the river, in the direction of the Plaintiff's property opposite his stone store. The natural bed of the river was about 100 feet wide at that particular spot, before the wharf in question was built. The building of the wharf has had the effect of narrowing the river where it is built to about 20 feet, that is to say, between the Plaintiff's store on the one side of the river, and the wharf built by the Defendant on the opposite side, there is a passage of about 20 feet for the waters of the river to escape, whereas, before the said wharf was built, there was a passage of about 100 feet; I never measured the width of the river correctly; I did measure the distance between the said store and the wharf, but I cannot say that I did so, very correctly, inasmuch as I had not a foot-rule with me; I measured it with a 12 foot pole and from that measurement I am prepared to state, and do state, that it is about 20 feet, it may be a few inches more, or a few inches less. I think the wharf was built in September or October last. I cannot tell to within a few weeks. The same men that built the Defendant's wharf opposite my mill went to finish the wharf in question afterwards, if it be finished. All I know is that they were to work there.

Question.—What effect has the building of the said wharf had upon the said river?

Answer.—It has narrowed the channel of the river, and in high water and freshets, it must throw back water upon the water-wheel, which turns the machinery of the mill, but I have no knowledge that such a thing has occurred, but should it have occurred, it must necessarily have the effect of stopping the mill. The wheel which turns the machinery of the mill in question is what is termed an overshot wheel and so soon as the water is driven back upon the said wheel, to the depth of 18 inches to 2 feet, it must necessarily stop. I should suppose that the natural current of the river is not now the same as it was before the wharf was built, inasmuch as it had a space of 100 feet more to flow in over, whereas it is now limited to a space of 20 feet. The river in question is not now as free for navigable purposes as it was before the wharf was built. It is much narrower in consequence of the building of the wharf. A bateau less than 20 feet wide might be floated up the said river as far as the stone-store, but a larger vessel could not come up further than the end of the new wharf. The Plaintiff has not now the same facilities as formerly, for the shipping of flour and the receipt of wheat, because he can only bring up one bateau at a time.

April 13th 1853, witness continues evidence.

The distance between the Plaintiff's store on the one side of the river and the new wharf built by the Defendant during last fall is between 21 and 22 feet, and at the lower end of the said wharf is 19 feet 6 inches. I measured it this morning before coming in. I have examined the plan now shown to me and marked Plaintiff's Exhibit X, filed at enquire, the said plan gives an accurate description of the river Beaufort, as it was when I was in possession of the mill, now in the possession of the Plaintiff, and before the wharves were built by the Defendant, and it also gives a correct description of the said river as it now is; before any of the wharves in question were built by the Defendant, the waters of the river Beaufort used to flow over all that space of ground described, on the said plan between the blue lines, on the east of the said river on the one side, and the west side of the said river on the other. The wharf described in the said plan "Wharf erected in 1851," and the wharf also described on the said plan as "Wharf erected in 1852," are the wharves of which I have spoken in my examination as having been built by the Defendant in the year 1851 and the following year: The wharf described in red on the said plan to the east ward of the wharf