

on top of that abutment (Q. 80) and Lobb cannot say what stone in particular he refers to (Q. 189).

Confusion occurs throughout, (See Q. 59-61). He speaks of "replacing the dam" (Q. 30, 40, 68, 72, 81, 172 and 173); of his method of measurement (Q. 48, 72, 76, 207-210) and of the dam then and now (Q. 211-213).

The pulling down of the old saw mill and the consequent repair was in the fall of 1900 or spring of 1901; not in 1903-4, as Lobb puts it. Lobb asserts this was done in pursuance of a claim to raise the water to high water mark (Q. 114) which he disputed; and says his son will corroborate him (which he does). Lobb says he burnt his record of one of these sticks in November, 1912, having heard from his son-in-law Benjamin Slade that this action was dropped. The latter was not asked about this at the trial. Lobb says he had no interest and does not know why McMullen asked him to measure (Q. 184-5), or what intent he had (Q. 200).

Robert Lobb, the son, corroborates his father, and identifies one of the timbers in question as the one marked on the plan "old timber with mortise holes" and as the one put on and disputed about. He says they took off and replaced timbers to the same height as the old dam, and then put this on.

Benjamin Slade also corroborates this.

The cross-examination of both these witnesses was not satisfactory. But the issue between the parties is very plain. The date, however, given by Lobb and his son is clearly wrong.

No other witness—although Mr. Watson named Russell Warner and George Read—deposes positively to the raising of the dam.

Upon the best consideration I can give to this point, and having regard to the detailed evidence of the repairs that were done, how they were carried out and why, and particularly to the dates and the present height as well as to the user sworn to, I have come to the conclusion that the dam was not raised during these repairs, but that confusion has been caused regarding the effect of the work of repair and by the lapse of time, and that what has been spoken of as additional timber is in reality timber used to replace at the same height that already in use or worn out.

I had not the advantage of seeing John Lobb. Ross Lobb's cross-examination revealed a lack of information upon