

on Watercourses, 7th ed., p. 261; Gould on Waters, 3rd ed., p. 612.

I find no provision restricting the use of the waters stored by dam No. 5 to any particular use, or to any particular mill.

No doubt all rights of property and all interests in easements or privileges in or connected with this dam are vested in the plaintiffs and the defendants. Of the dam itself they are owners in common; in the easements and privileges each has an undivided half interest. "An undivided half of a thing involves the idea of another half in common; and the owners of such, in the absence of express limitation, must have equal rights and privileges in the whole." *Dow v. Edes*, 58 N. H. 192, 195. These, by the agreement of 20th January, 1880, have been stated to assure to both owners "the right to draw water from and use the dam number 5 for their own purposes." Reading the documents before me together, and in the light of the circumstances as disclosed in evidence, in my opinion they indicate the following to be the rights of the parties as to the user of the dammed water:—

1. Each party has an absolute right to use in a reasonable manner (*Batavia Manufacturing Co. v. Newton Waggon Co.*, 91 Ill. 230, 245, and *Appelton Pulp Co. v. Kimberly*, 100 Wisc. 195), for their own purposes, so much of the dammed water which may properly be used for generating power as he requires, not exceeding one-half of the whole of such water: *Runnels v. Bullen*, 2 N. H. 532, 537; *Bailey v. Rust*, 15 Me. 440; *Richards v. Koenig*, 24 Wisc. 360.

2. Each party has a right to use, for their own purposes, over and above the one-half to which each has such absolute right, so much of the remaining water, which may be properly so used, as will not interfere with or impair the user in a reasonable manner by the other party of the water to which he is entitled and which he from time to time requires: *Howe Scale Co. v. Terry*, 47 Vt. 109, 126.

3. By "their own purposes" are meant any lawful uses to which such water may reasonably be put in a business owned and conducted by the party, as distinguished from a grant or lease of the right to use such water to a third party.

4. Any water not required by either party for "their own purposes," thus defined, is "surplus water," to be dealt with according to the provisions of the agreement of 20th January, 1880.

Judgment will be entered declaring the rights of the parties in these terms, and enjoining the defendants from using the water stored by dam number 5 in contravention of plaintiffs' rights so declared.