

can practically, during the summer, or at all events for a longer time than formerly, flood the plaintiffs' lands.

It may be said that apart from the question of tightening, the systematic holding up of every increase of water during a dry season, and making use of every rainfall, while a much less lengthy process than during a wet season, is in its legal effect the same. That is, it is a user of the water so far as user can be had, having regard to the season. If so, can the fact that the rains occur immediately after the spring freshets cease, deprive the defendant of the right to use the rain water which happens opportunely to lengthen the spring user, if he has the right to use it if and when it occurs, after an interval?

In Innes' Law of Easements, 7th ed., p. 57, this proposition is laid down: "If a person . . . has obstructed or diverted the waters of a defined natural . . . stream, whether continuously or at regularly recurring intervals, for a period and under the other conditions required for the acquisition of easements by prescription, he may thereby acquire an easement against riparian owners affected by his conduct."

Goddard, 7th ed., p. 346, states it thus: "A right may be acquired to obstruct the water of a stream from flowing in its usual course, and to pen it back on the land of riparian proprietors, if the practice of obstructing and penning it back has continued for twenty years uninterruptedly, and if the servient owner has been prejudiced thereby."

In another part of this author's work, at p. 269, he adverts to the condition described by Innes as "at regularly recurring intervals," thus:—

It should be mentioned that . . . an accidental stoppage in the flow of water is not an interruption which will prevent prescription; for, if such interruptions had that effect, said Tindal, C.J., the accident of a dry season, or other causes over which the party could have no control, might deprive him of a right established by the longest course of enjoyment." See *Hall v. Swift*, 4 Bing. N. C. 381. In that case, where a stream of water, from natural causes, ceased to flow in its accustomed course and did not return to it until nineteen years before action, the lapse of time did not cause the loss of the right to the flow of water. Goddard prefaces the above statement with the following remark:—