

any of the mechanical arrangements for distributing and utilizing the water-power of the reservoir. Their lordships must not be understood as indicating an opinion that the arrangements then made must remain stereotyped for ever; but they are of opinion that, until some steps were taken by the appellants, with a view to a new adjustment, the respondents were justified in leaving their original arrangements and machinery unaltered.

Their lordships have been unable to find, in the evidence, any ground for affirming, either that the pier erected by the respondents in connection with their factory had any effect in diminishing the motive force of the water which they used, or that the machinery through which that force was developed was in any respect defective.

Keeping in view the opinion already expressed by their lordships, with regard to the nature of the warranty undertaken by the appellants, it does not admit of doubt, that, for at least 18 months before this suit was brought, they acted in persistent violation of the warranty. During that period there were two exceptionally dry seasons; and the effect which the prevailing drought had, in diminishing the supply of water, was seriously aggravated by the state of disrepair into which the dam had fallen, owing to the action of floods and ice. It is neither alleged nor proved that the appellants failed to take proper measures for the restoration of the dam, or failed to execute the necessary repairs within a reasonable time. But the evidence shows that, whilst the river was low, and repairs were going on, there was generally, if not constantly, an available supply of water-power obtainable from the reservoir. The evidence does not suggest that the total amount of water-power available at these times ever exceeded 100 horse-power. On the contrary, the evidence on both sides points to the inference that it frequently was considerably short of that amount. And it is proved beyond question, that the appellants and their tenant appropriated the bulk of the horse-power available, with this result, that, when the appellants and their tenant stopped working, the respondents had ample water-power to drive their machinery, and that, whilst the factories of the appellants and their tenant were in operation, the respondents' supply of water-power was either insufficient, or wholly ineffective.

The conclusion appears to their lordships to be inevitable, that the appellants must bear the loss resulting to the respondents,