

Against that opinion an equal, if not greater, array of professional gentlemen, with more positiveness, asserted that such means would be useless, and any more gates a source of great danger to the structure.

In these circumstances, how can anyone say that defendants were guilty of negligence? . . .

Upon the whole evidence, my finding, if necessary, is that the precautions suggested by plaintiffs' witnesses would not have saved plaintiffs from the losses they sustained to any appreciable extent. But, if it could be found that the weight of opinion or argument was with plaintiffs, how can it be said that defendants were guilty of negligence in not discovering and adopting such expedients, in a case where for so many years their own plan worked satisfactorily?

There seems to me to be no doubt, upon the whole evidence, that plaintiffs' losses in the year in question are not appreciably attributable to defendants, but were caused by heavy and repeated or long continued floods, and the exceedingly wet weather following them: and this is borne out by the fact that like losses were sustained by other farmers whose lands were not so low lying and are situated so that they would not have been effected by the defendants' dam.

A lesser branch of plaintiffs' claim is the complaint that defendants put a temporary dam across the stream above the dam in question, to enable them to repair the latter, and that they left part of the temporary structure there, and that it had to some extent caused the plaintiffs damage by holding the water back too long upon their lands.

There is really nothing substantial in this claim. The plaintiffs' witness who knew most about the matter, because he had worked on the temporary dam and helped in its removal when the work of repair was finished, long before the flood which injured plaintiffs, said that there was a small quantity of brush and some loose gravel that was not or may not have been removed. But it is very plain that that would not pen back any great body of water, but would be swept away, if any real obstruction, at the first rush of the flood. So that it was no matter of surprise to hear the testimony of the witnesses for the defence that after a very careful search they were unable to find any such obstructions or any part of the temporary structure now remaining.

The plaintiffs' case wholly fails, and must be dismissed, and dismissed with costs, if defendant asks costs.