

duration of the spring freshets and some put it as lasting up to the 1st or 15th of May, some to the 15th or end of April.

Without setting out the evidence in more detail, there is, to my mind, until after 1908, a great preponderance in favour of the view that the water was used regularly during the spring freshets up to a seven-foot head, and not after that, and again in the late fall and winter. The evidence I have quoted from the defendant and his sons seems to bear this out. The dates of the repairs, and the fact that on complaint the defendant in the summer let down the water, point too, in this direction.

In 1900 the defendant put in steam; and between that time and 1908 David Breckenbridge says they did not use so much "continuous" water power. They abandoned steam in the saw mill and went back to water power for both in 1908. From that time on the trouble dates.

It may be that the defendant did not use more water power, but having abandoned steam—which his son David said he only used when there was not enough water—i.e., in the summer time—the use of the water was made more continuous and included the summer months. The history of the years after 1908, shews that something had changed.

Richard Barens (called for the defence) says, too, that after the defendant had repaired the dam about four or five years ago they could hold more water—i.e., hold it full but not higher—and that before that time it used to leak through, and that now the dam has been made to hold water. If so, this would account for the added length of time it could be preserved and used. Barens says he knows the mill for forty years.

Benjamin Cardwell noticed the water rising in 1908, and had never seen it so high before, except during freshets.

T. Cardwell said it lasted till the 1st July, although the spring freshet was gone by the middle of April.

As to 1909, 1910, and 1911, the same story is told, although the spring freshets were said to be over as usual.

In 1912, Matthew Breckenbridge admits that the water was up to the top of the embankment nearly the whole of the year.

It is true that the statements of the witnesses on both sides differ in detail, and the above does not accord with all that has been sworn to. As an illustration, more than one