

cise of their right to take preferably, from the water of the reservoir, a supply for their factory equivalent to 100 horse-power. There is no warranty that the river will bring to the reservoir a sufficient quantity of water to yield that amount of motive power, at all seasons. And, there is an express exception from the warranty, in the clause, which has already been quoted, with reference to necessary repair of the dam by the appellants. During legitimate repairs, the reservoir may cease to supply water available for manufacturing purposes; or, it may supply less than the amount to which the respondents are entitled. The clause protects the appellants against liability in respect of such failure or short coming; but it gives them no right, when the actual supply of water is less than 100 horse-power, to appropriate any part of it which may be required for the use of the rope work, in prejudice of the respondents.

In these circumstances, the case presented by the appellants appears to their lordships to resolve into two questions, which are questions of fact depending on the evidence:—(1) Were the respondents, through the act or default of the appellants, hindered from obtaining the full amount of water-power required for their factory, such amount not being in excess of 100 horse-power? (2) Was any deficiency in the respondents' water-power due to their own failure to make proper arrangements for its reception, and to provide proper machinery? In the event of the first of these questions being answered in the affirmative, and the second in the negative, a further question arises, as to the amount of damage, if any, which the respondents have suffered through the illegal conduct of the appellants.

The proof led by the parties, in so far as it relates to the dam, to the storage capacity of the reservoir which it forms, the precise means which have been employed, and the best available means which could be employed, for distributing the water-power which it represents among the parties interested, cannot be regarded as satisfactory. Facts capable of precise ascertainment, by measurement and otherwise, are left to speculation and the estimates of the witnesses differ widely. But, so far as their lordships are able to judge, the evidence favours the conclusion that the relative levels of the intake sluices, for the appellants' and respondents' works, have remained unchanged since the date when the respondents' factory was started, and that no substantial alteration has been made, since that time, upon