

Plaintiff's theory . . . is that the new bridge, because of the alleged incapacity to carry the water during an ordinary spring freshet, caused it to back up on to his land and inundate it. But while the old bridge was in existence, and is represented as being adequate to carry off all the water that came over the dam, and had a capacity, according to Mr. Fielding, of 1,000 cubic feet per second in excess of what came over the dam, yet during the ordinary spring freshets each year the flats and part of plaintiff's orchard were flooded from the river. Plaintiff did not assert that these latter inundations were caused by the backing up of the river from the bridge, for the water, he said, entered on his land from the south-west of his house, and spread from the flats to the part of the orchard. . . .

The present bridge with a clear span of 85 feet 6 inches between the abutments has almost the same capacity as the old bridge of 105 feet between the abutments, but with a centre pier having a water displacement equal to 18 feet 9 inches, which would make a clear water way of 86 feet 3 inches. There is, therefore, a difference of only 9 inches in the water-carrying capacity of the two bridges.

I am satisfied from the evidence that during the freshets of 1904 and 1905 plaintiff's property was not flooded by the backing up of water from the new bridge; but that the water entered on his land from the south and west, and was flooded in that way. The snowfall preceding the flood of 1904 was the greatest in many years, and the freshet was of an unusual character; and the freshet of 1905 was unusual by reason of the quick melting of the snow, causing the Teeswater river and its tributaries to fill up with extraordinary rapidity. Against these unusual contingencies defendants were not called upon to provide: *Dixon v. Burnham*, 14 Gr. 594.

As Mr. Warren is an engineer of experience and as he had associated with him in preparing the plans, etc., Mr. McDowall, also an engineer of large experience (having prepared the plans and superintended the construction of 25 bridges varying in cost from \$1,200 to \$25,000), and as the plans and specifications had been submitted to the council and approved of by them, that alone would have been sufficient to free defendants from liability: *Hill v.*