

In 1886 the two inside sections of the dam and the timber slide were taken down and repaired. In 1900 and the winter of 1901, steam was put in, the posts replaced in the timber slide, and the old saw mill on the west was taken down, as well as its flume; and the dam was repaired. In 1903 shafting was put across below the dam, a chopper put in, and steam was used to saw and grind chop. In 1908 the old grist mill flume was made into a sluiceway, and a new concrete flume put in to the east.

Much evidence was given upon all the issues raised. The chief disputes were (1) was the dam raised? (2) was it tightened? (3) had the defendant acquired the right by prescription to collect and retain whatever amount of water the dam, if it remained unaltered, could contain at any time? (4) the question of damages and injunction. There were other minor questions, but these formed the chief element in the consumption of the time occupied by the trial.

In discussing the question of the exact height of the present dam and the height of the dam at a time spoken of by one Lobb in 1902 or 1903, and also the height of the embankment and of the water at several dates, a number of plans and elevations were put in. There are four plans which give elevations; exhibits 13, 14, and 28, being confined to the dam, the former taking in the embankment on the west or left side of the mill pond; exhibit 30 dealing with portions of the lands involved.

Mr. Watson for the plaintiffs objected to the later plan on the ground that it professed to give surveys and that Mr. Wright its draughtsman, was not an O. L. S. Mr. Watson referred to 1 Geo. V., ch. 41, sec. 25. I overruled the objection; but Mr. Watson relied on it, and in consequence did not cross-examine at length.

I think that Wright was a competent witness; and the only restraint that I can find in the statute is in sec. 3, which does not in any way affect his right to give evidence. The weight to be attached to it might be measured in some degree by sec. 25.

Plan 13 is unsatisfactory; it has no datum line, and the scale, four feet to one inch, does not agree with the marked measurements. Nor does Mr. Wilkins, who prepared it, give depths to correspond; as his evidence make it 7 feet 8 inches to the top of splash board from bed of river, whereas the plan shews eight feet.