

is located & that ever since the said year 1856 & for more than years before the commencement of this suit the said dam has been constantly kept up, sustained & maintained at the height of four feet & nine inches or thereabout above the usual low water mark in said River or at a height exceeding four feet & nine inches by the owners of the said dam & of the water power thereby created, & that for more than twenty years next preceding the commencement of this suit the lands described in the Plaintiffs complaint have been continuously overflowed & the waters of Rock River set back thereon so far as the same would naturally & necessarily be overflowed & the waters of said Rock River be set back thereon by means of keeping up & maintaining & sustaining the said dam at a height of four feet & nine inches above the usual low water mark in said Rock River when the said dam is located & situated.

The answer of the defendant further states & shows to the court that during the summer of the year 1870 the owners of the said mill dam mentioned & described in the Plaintiffs complaint & of the water power thereby created, caused the said dam to be built up & erected one foot or thereabout higher than it had been before that time so that the said dam was five feet & nine inches in height above the usual low water mark in Rock River when the said dam is located & situated or thereabout & that since the said dam was so raised & built up in the summer of said year 1870 the same was & has been continuously kept up & maintained at the said height & at no greater height than it then was until the summer of the year 1876 as is herein after stated.

And this defendant's answer further shows that at the time of the passage & approval of the act of the legislature of the State of Wisconsin mentioned in the said complaint entitled an act to incorporate the Beloit Water Company approved March 8 1871 the said mill dam was five feet & nine inches in height or thereabout & that the same was kept