We discover nothing in the rulings of the Court below that requires this Court to reverse the judgment. The question here is, whether the Court below committed error in granting the prayer of the plaintiff, with the modification added, and in rejecting the first and second prayers offered by the defendants. We think there was no error committed in this respect of which the defendants can complain.

The whole controversy turns upon the fact, whether the defendants had wrongfully and in violation of the grant by Charles Jessop, of the 10th of October, 1846, raised the breast of their mill-dam, so as to back the water upon the mill of the plaintiff above that of the defendants.

By the lease from John Hargman to Samuel Smith and others, under whom the defendants claim, there was an agreement or covenant by the lessor, that there was then, and should forever remain, for the use

and benefit of the lessees, and their assigns, and as appurtenant to the land demised, "a fall of at least eleven feet at common water mark, at the rock stone in the middle of the falls aforesaid," where a dam was then in course of erection; and that the lessees should "forever have the right and privilege of damming and pooling the water at the aforesaid rock, thereby covering so much land on both sides of the said falls as may be necessary and sufficient to secure an uninterrupted fall from above, down to that place, of at least eleven feet as aforesaid."

By the subsequent lease from Charles Jessop, (under whom the plaintiff claims) to Smith and others, of the 10th of Oct. 1816, it was manifestly intended to grant and confirm to the lessees an extension of the water power previously acquired by them; but, at the same time, it is quite clear, that it was intended that there should be a limit to the power then granted. The terms employed, it is true, are inapt and quite inappropriate to

define the limits of the power granted; but there can be no doubt, upon the whole context of the instrument, as to what was the real meaning and intention of the parties. The lease was of so much land as was at the time covered by the waters of the Gunpowder Falls, by the backing or damming the stream by the dam then erected, or as might or should be requisite and necessary to be covered by the backing or damming such stream, according to the terms employed, "so as to make the fall thereof at least twelve feet at common water mark," at the point designated; "and the right and benefit of the water to the extent aforesaid, and of damming and pooling the same in manner aforesaid." That the terms "at least" should be read with the context as intended to mean the same thing as "at most," or "not to exceed" twelve feet, we think is clear; and that appears to have been the invariable understanding of all the parties concerned, from the date of the lease to the present time.

A literal reading of the clause would grant the power to raise the dam to any extent that the defendants might deem proper, and without any limit whatever;- a power manifestly that was never intended to be conferred, and for which we do not understand the counsel for the defendants to contend. Indeed, the prayer offered by the defendants, and rejected by the Court, concede that there was no warrant or authority for raising the dam above the height of twelve feet.

The prayer of the plaintiff, as modified and granted by the Court, would seem to have fully presented the law of the case, and in a form to which the defendants could not rightfully object. ~~By that instruction the~~ For while the construction placed on the clause of the 10th of October, 1816, may not have been technically accurate, yet the instruction as given to the jury was in form most advantageous to the defendants. By that instruction the jury were informed that the defendants could maintain their

that where a party gets the benefit of all the law to which he is entitled, he cannot complain that he does not get it stated in his own terms.

It follows that the judgment must be affirmed—

(Decided 15th May, 1884) Judgt affirmed.

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No. 59.

The Warren Manufacturing Company of Balto. County,

vs.

William H. Hoffman.

A. M. A. & G. & B.

Opinion by Alvey, C. J.

To be reported

Filed May 15th 1884.