relief which they need or are entitled to. The probate settlement will now be made upon exactly the same basis; and full redress is obtainable before that tribunal, the ordinary and appropriate jurisdiction of which is not to be transferred into a court of equity.

Demurrer sustained, and bill dismissed with costs.

LEAVITT FINNEY *vs.* ELLIS BARNES & another, executors.

An executor's notice, under Gen. Sts. c. 97, § 1, is not void because signed by him as "administrator," under the caption "administrator's notice," and he describes himself therein as "duly appointed administrator," and it does not otherwise appear thereby that he was executor.

CONTRACT for money had and received by Ellis Barnes, the defendants' testator, to the plaintiff's use. The defendants pleaded in bar the special statute of limitations of actions against executors and administrators.

At the trial in this court it appeared that the defendants were duly appointed executors under the will of Ellis Barnes, deceased, and were required by the probate court to give notice thereof by publishing in the newspaper called The Plymouth Rock, printed at Plymouth; and that more than two years prior to the commencement of this action they published in that newspaper a notice as follows:

"Administrators' Notice. "Notice is hereby given, that the subscribers have been duly appointed Administrators of the Estate of Ellis Barnes, late of Plymouth, in the County of Plymouth, deceased, and have taken upon themselves that trust, by giving bond, as the law directs. All persons having demands upon the estate of said Ellis Barnes, are hereby required to exhibit the same; and all persons indebted to said estate are called upon to make payment to

"Plymouth, "Ellis Barnes, } Administrators."
"January 20, 1862. "John C. Barnes. }

The question of the sufficiency of this notice under Gen. Sts

c. 97, §§ 1, 5, was reserved by *Gray*, J., for determination by the full court.

E. Ames, for the plaintiff.

C. G. Davis, for the defendants.

By the Court. The statute of limitations is a bar to the suit. The notice of the defendants' appointment to administer the estate of the deceased was sufficient, although it called them administrators and they were executors. *Sheldon* v. *Smith*, *ante*, 34. *Judgment for the defendants.*

Ephraim Stetson *vs.* E. Carver Company.

The owners of a mill-dam and water privilege, who have a right, which they have not exceeded, to maintain their dam at a certain height, are not liable to an owner of land bordering on the stream at a point above a highway which crosses the mill-pond above their dam, for flowing caused by the act of a lessee of their grantor, several years before the conveyance to them, in changing the location of the highway, and stopping up the sluiceway which conducted the water of the stream under it, and substituting another sluiceway of smaller capacity in a different place, although a vote of the town accepting the highway as changed provided that their grantor should keep the new sluiceway in good repair.

Complaint under the mill-act, Gen. Sts. *c.* 149, for flowing the complainant's cranberry meadow situated on Herring Brook in Halifax. The case came before this court on appeal from the superior court, where it was submitted to referees, by whose report it appeared that ever since 1849 the respondents have owned a mill-dam and water privilege on Herring Brook, known as the Old Furnace Dam, and possessed the right to maintain the dam at a certain height, which they had not exceeded; that prior to 1841 the mill-pond was crossed at a point about seventy-five rods above the dam by an ancient highway which ran over a bridge, through which was a sluiceway; that in 1841, two brothers Morey, who were then owners of the mill property, built a temporary dam across the sluiceway, to hold off the water while repairing their mill; that on removing this temporary dam the current undermined the abutment of the bridge, and