réduira toujours à ceci: vous avez submergé mon immeuble, et vous m'avez privé de la jouissance que j'avais droit d'en avoir, pendant un certain temps: indemnisez-moi. Qu'est ce que la jouissance d'une chose, sinon la faculté d'en retirer et de s'en approprier les fruits naturels ou civils? Cette demande n'est donc qu'une demande d'une somme d'argent, représentant les fruits naturels du terrain du demandeur qu'il aurait pu produire, si le fait imputé à Henry King & Co. ne s'y fût opposé. Il s'en suit que l'art. 2250, C.C., s'y applique, et que la demande est prescrite par cinq années. Or il est constant par la preuve que ce n'est qu'en 1874 que Henry King & Co. se sont servi de la chaussée, que la société a été dissoute le 24 décembre de la même année, et il n'y a pas au dossier un mot de preuve pour rendre l'appelante responsable de ce qui a pu avoir lieu après la mort de son mari. De 1874 à 1880 il y a un espace de temps plus que suffisant pour que l'article 2250 prenne effet, et pour enlever à l'intimé tout recours pour ce qui a pu précéder le 8 oct. 1875. N'oublions pas que l'article 2267 statue que, dans ce cas, la créance est absolument éteinte et que nulle action ne peut être reçue."

Messrs. Langlois & Joly, for respondent, do not refer in their factum to the prescription of five years, which was not pleaded, but only to the prescription of two years as for a *quasi délit*, which was pleaded. This plea was overruled by the Supreme Court, and need not be further noticed at present.

In a "Supplementary case," however, Messrs. Langlois & Joly submitted the following argument:—

"By her factum in this Court the appellant has laid great stress upon a point not raised by the pleadings, nor even mooted in the Court below, viz: a prescription of five years against the respondent's claim, as for a demand for annual rent under article 2250 of the Civil Code.

"The demand is two-fold: 1st, for damages which still continue, and 2nd, for use and occupation, not for any stipulated term, but extending over several years.

"Without at all admitting that the present claim can be considered as one for annual rent, or that the prescription under art. 2250 is applicable, respondent begs to refer to the arbitration bond entered into between the parties by notarial deed, 31st August, 1877, whereby, after reciting the present claim, they agreed to submit the settlement of it to *amiables compositeurs*, and in the most formal way bound themselves to abide by their decision. The parties, by that deed, certainly interrupted any prescription which might then have commenced to run, and it is only from that time that any new prescription could take its date of beginning.

"Renunciation of prescription is express or tacit. C.C. 2185.

"Prescription is interrupted civilly by renouncing the benefit of a period elapsed, and by any acknowledgment which the possessor or the debtor makes of the right of the person against whom the prescription runs. C.C. 2227; *Delisle* v. *McGinnis*, 4 L.C.J. 145; *Walker* v. *Sweet*, 21 L.C.J. 29."

The following opinion was delivered by Ramsay, J., one of the majority of the Court:—

RAMSAY, J.:—

"This is an appeal from a judgment condemning appellant, along with John Breakey, a brother of respondent, to pay jointly and severally to respondent a sum of $1600 for the use and occupation of a piece of land flooded by a dam built by defendants, and on which they boomed logs.

"The appellant's first point is that for a large part of the demand there is a prescription of five years which, though not pleaded, should be taken notice of, and applied by the Court. The argument is this. By Article 2188, C. C., it is declared that the Court cannot of its own motion supply the defence resulting from prescription, except in cases where 'the right of action is denied'. Therefore it is said that the Court must of its own motion supply the defence resulting from such prescription. Again, it is said that the present action is under Article 2250, C. C., and that Article 2250 is one of those cases in which after the lapse of five years the right of action is denied (2267, C. C.). On the part of the appellant the French version was cited. It differs a little from the English version as it says, 'nulle action ne peut être recue', while the