

raise the bridges *after having first obtained* the consent of the municipality or owners.

In this case the defendants went on with works *without so doing*. In fact no action of the Municipal Council was taken, and the defendants proceeded with the work at their own costs and risk, and though possibly the municipality may have been liable, the defendants, I think, are also liable for any damages they may have caused plaintiff.

The protest by plaintiff against the municipality meant nothing but protecting himself. What defendants' counsel say is quite true as to the rights and obligation and the mode of procedure in cases of *garantie simple* and *garantie formelle*, but does not apply to this case. Here the party doing the work is equally responsible with the municipality who might or should have controlled it.

In *Brodeur v. Roxton*, 11 R.L., p. 447, Buchanan, J., where the decision was in an action *en garantie* Municipality v. Railway, the authorities cited are in favor of the plaintiff. The reference to *Pierce on Railways*, p. 241, p. 453, R.L., vol. 11, speaks of special damages which in this case are caused by defendants, and the whole tenor of decisions supports plaintiff's pretensions.

As to the second point, that the work was compulsory on defendants, *i.e.*, raising of bridge, I do not think it exonerates them. They have special privileges, and when building their road were obliged to pay such damages as they then occasioned. The change was in the interest of the public generally and for the safety of their employees in particular. What with the substitution of steel for iron rails, the building of larger and more powerful engines, the increased size and height of freight cars, they are acting for their own benefit in the interest of their own business, and the legislature steps in for the protection of life, and says, you must have higher bridges. They put them in and injure private property. Who should suffer, the individual, or the Company who, to increase their business and lessen their expenses, have rendered them necessary? Undoubtedly, the Company.

Now we come to the more serious question, what amount of damage has plaintiff sustained. I think by his declaration and by

his witnesses he has claimed and attempted to prove altogether too much, and too remote damage in many instances. The main damage is difficulty of egress and ingress throwing water and snow on to plaintiff, dampness to the house and injury to the cellar wall. The plaintiff's witnesses place it too high, much too high, unreasonably high; they say you have to keep front windows shut for dust, and view either horizontal or oblique, &c.

But having carefully examined the evidence, I think that Mr. Hart's evidence as to damages is much more reasonable than plaintiff's witnesses, who give all the way from \$500 to \$2,500, when the property is only assessed at \$1,500 on the assessment roll. I think if the plaintiff gets 20 per cent, or one fifth, of the estimated value, *i.e.*, by valutors, the amount on which he pays taxes, he will be amply compensated.

Judgment for \$300, interest and costs.

*Hon. H. Aylmer* for plaintiff.

*Hall, White & Cate* for defendants.

#### LOUISIANA: THE STORY OF ITS JURISPRUDENCE.\*

It is the fashion nowadays to have an opinion about codification or the newest code, but even a slight acquaintance with the earliest of our codes seems to be regarded as an acquisition scarcely worth the pains, or even as a valuable accomplishment. To the ordinary lawyer in one of our common-law States the jurisprudence of Louisiana is a mere rumor, an unprofitable subject, a matter of scantiest information. Perhaps the savor of Roman jurisprudence, itself now out of favor with most of us, has helped to repel acquaintance with the characteristics and the history of the law of Louisiana. Yet for this lack of appreciation there is no good reason. Few subjects so well reward attention as the unique position in American jurisprudence occupied by the law of Louisiana, and the singularly interesting course of events which out of such varied material has given us the system of law now so much in contrast with the other systems of the Union. Other states have codes; other governments of modern times have composite bodies of

\* By J. H. Wigmore in *American Law Review*.