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## PRESCRIPTION.

In our last issue we referred to the case of *Lamontagne & Dufresne*, in which apparently it was held by the Court of Queen's Bench that the short prescriptions must be pleaded.

We come now to the case of *Breakey v. Carter*.

This case came before Mr. Justice Casault in 1881 on demurrer and law issues, and the judgment is reported in 7 Q. L. R. 286. The final judgment was rendered by Mr. Justice Stuart on the 19th April, 1883, and was in the following terms:—

"The Court etc. ....

"Considering that the plaintiff (Wm. Breakey) hath proved the material allegations of his declaration, and more particularly that he is the lawful owner of the lands described in his declaration, and that the defendant John Breakey, and Henry King were merchants and co-partners in the business of sawing lumber at a mill on the Chaudière River, in the parish of St. Jean Chrysostôme, in this district, called and known as the Breakey mill; that, being so engaged in manufacturing lumber, the said Henry King and John Breakey did, in the year 1873, construct a dam in and across the said river Chaudière, by means of which the waters of that river, during the spring and autumn of each year, were directed on and upon the said lands of the plaintiff, and submerged about twenty acres of the same, and that the said twenty acres became by this means and have continued to be, and still are adapted for a pond or place fitting in a high degree to hold saw logs in quantities, from 30,000 to 60,000, from all danger of being carried down into the river St. Lawrence, during the high waters of that river;

"Considering that the said firm of Henry King & Co., composed as aforesaid, having thus made a safe shelter for the saw logs floated down the said river, used and occupied the same for the safe keeping of their saw

logs, from the making of the said dam, in 1873, to the end of the year 1877, when the said property called Breakey Mills was duly sold by licitation;

"Considering that the said Henry King departed this life at the end of the year 1874, leaving his wife, the defendant Louisa Salmon Carter, and the several children, issue of his marriage with her, of which she is tutrix, representing his succession;

"Considering that the defendants continued after the decease of the said Henry King, in the occupation of the said Breakey Mills up to the time when the said mills were so sold by licitation as aforesaid, and were engaged in liquidating and winding up the affairs of the said partnership of Henry King & Co., which had existed between the said Henry King and John Breakey, and that during all the time of such liquidation, they, the said defendants, used and occupied the said property of the plaintiff, for the safe keeping of their saw logs in the same manner and extent as the said Henry King & Co. had used the same;

"Considering that the plaintiff by proceeding against the defendants, for the said use and occupation of the same, have waived any right of action for damages, if any was caused to him, the plaintiff, by the construction of the said dam, by thereby submerging the said lands;

"Considering that the plaintiff hath proved, by persons having experience in the trade and in the floating of saw logs down the Chaudière river, the value of the use and occupation of plaintiff's said property for the safe keeping of saw logs, to be \$400 a year, and that said Henry King & Co. and defendants, have together so used the said lands for four years, the Court doth adjudge and condemn the defendants jointly and severally, to pay for the causes aforesaid, to the said plaintiff, the sum of \$1600, with interest from the 11th Oct. 1880, the whole with costs, *distrains*, etc."

The defendant appealed from this judgment, Messrs. Bossé & Languedoc for appellant. On the question of prescription, appellant's counsel submitted the following argument:—

"Qu'on tourne et qu'on retourne la demande de l'intimé sur tous les sens, elle se