

should be measured up-stream and down-stream from the site of the bridge as constructed.

Per Nesbitt and Idington, J.J., that there was not any expression in the statute shewing a contrary intention and, consequently, that the distance should be measured from a straight line on the horizontal plane; but,

Per Idington, J.—In this case as the location of the bridge was to be "opposite the road leading to Ste. Thérèse," and there was no proof that the new bridge complained of was within half a league of that road, the plaintiff's action should be maintained. Appeal dismissed with costs.

*Belleau*, K.C., for applicant. *L. P. Pelletier*, K.C., for respondent.

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Que.] MONTREAL STREET RY. CO. v. BOUDREAU. [June 13.]

*Nuisance—Machinery—Continuing nuisance—Permanent injury—Damages—Prescription.*

Where injuries caused by the operation of machinery have resulted from the unskilful or negligent exercise of powers conferred by public authority and the nuisance thereby created gives rise to a continuous series of torts, the action accruing in consequence falls within the provisions of art. 2261 C.C. and is prescribed by the lapse of two years from the date of the occurrence of each successive tort. *Wordsworth v. Harley*, 1 B. & Ad. 391; *Lord Oakley v. Kensington Canal Co.*, 5 B. & Ad. 138; and *Whitehouse v. Fellowes*, 10 C.B.N.S. 765, referred to.

In the present case the permanent character of the damages so caused could not be assumed from the manner in which the works had been constructed and, as the nuisance might, at any time, be abated by the improvement of the system of operation or the discontinuance of the negligent acts complained of, prospective damages ought not to be allowed, nor could the assessment in a lump sum of damages past, present and future, in order to prevent successive litigation, be justified upon grounds of equity or public interest. *Fritz v. Hobson*, 15 Ch. D. 452, referred to. *Gareau v. Montreal Street Ry. Co.*, 31 S.C.R. 463, distinguished. Appeal allowed with costs.

*Campbell*, K.C., and *Hague*, for appellants. *Mignault*, K.C., and *Lamothe*, K.C., for respondents.