contracts, although they be not expressed." Art. 1017, C. C.

The rule, therefore, of our law being clear, it only remains for us to enquire what is the amount of damages to be awaRded. We cannot adopt the estimation of appellant's witnesses. It is evidently not a damage of an irreparable kind, and it can hardly be said to affect in any great measure anything but the lot next Dubord street. Damages $200.

Sir A. A. Dorion, C. J., said the circumstances of this case differed so materially from the *Bell and Drummond* cases, that he was inclined to think the Privy Council would hardly hesitate in this case to come to the same conclusion as had been arrived at by this court. It was sufficient to show that there was no difficulty in the case according to the principles of French law, which were admitted in the case of Bell to be those which should govern. A corporation cannot be prevented from doing works which they are by law authorized to do for the general benefit; but if in doing these works they inflict damage, they are bound to indemnify the person injured. There was no doubt that the appellant had a wall six feet high to his property on the street. The Corporation raised the street three feet, so that the appellant's wall was then only three feet high, and he had to raise it. He had a gate cut in two by the raising of the street, and he suffered some other small damages. There was a difficulty in getting at the exact amount, but the Court allowed him the moderate sum of $200. The question of prescription had been raised. In short prescriptions, the Code says the debt is extinguished, and no action can be maintained after the time has elapsed. The Court had to give some interpretation to that. But whatever opinion the Court might have on this point, it did not come up here, because the question of prescription did not arise. The damages complained of were not damages that could be seen the very day the work was done. The wall inclined over gradually until it had to be propped up. If the appellant had brought his action at once, he might not have been able to prove damages. The Court was of opinion that the damages being *continuous*, the two years prescription did not apply. The Court, therefore, had not to express any opinion at the present time on the rule as it had been expressed in the Code, and which his honor appeared to think, did not adequately embody the idea of Mr. Justice Day, as suggested by his report. The Court expressed no opinion however, on this point, as it did not arise here, this Court having already held that the two years prescription does not apply to cases of continuing damage.

Cross, J., remarked that in his view the present judgment in no way conflicted with the decisions of the Privy Council which had been referred to. As to the question of prescription, it was very embarrassing, and when fairly presented would have to be met.

The judgment is as follows:—

"Considérant que les appelants ont prouvé les principaux allégués de leur déclaration, et notamment que l'intimé a, dans le cours de l'Eté 1871, fait élever ou permis que l'on élevait le niveau de la rue Dubord, qui longe le côté nord ouest de la propriété des appelants, entre deux et trois pieds de hauteur ;

"Et considérant que cette élévation du niveau de la rue aurait fait refluer les eaux de la rue sur la propriété des appelants, et aurait fait pencher le mur de cloture de la propriété des appelants, et détérioré la porte de cour que les appelants avaient dans le dit mur de cloture, et causé d'autres dommages à leur propriété, à un montant d'au moins $200 ;

"Et considérant que la prescription de deux ans ne s'applique pas à ces dommages qui sont continus, et qu'il y a erreur dans le jugement rendu par la cour supérieure siégeant à Montréal le 31me jour d'Octobre 1876 ;

"Cette cour casse et annule le dit jugement du 31 Oct. 1876, et procédant à rendre le jugement qu'aurait du rendre la dite cour supérieure, condamne l'intimé à payer aux appelants la somme de $200 de dommages avec intérêt à compter de ce jour, et les dépens," etc.

A. W. Grenier, for Appellants.

R. Roy, Q. C., for Respondents.

COURT OF REVIEW.

Montreal, January 31, 1880.

Torrance, Rainville, Papineau, J J.

In re Davidson et al., insolvents, Riddell, Assignee, and Stanley, claimant.

[From S. C. Montreal.

Insolvency—Proof of claim.

The judgment brought up for Review was