

DRYSDALE, J.:—The plaintiff is a commissioner of sewers for Cumberland county, and this action is to recover from defendant his portion of an expenditure made in building an aboiteau near the mouth of the Forrest Creek, in the Amherst Point Marsh, so-called. The claim is put in two ways, first, that from time immemorial the proprietors of the bodies of marsh known as letters A. B. and C. bodies and the Forrest body and New Marsh, have built, repaired, replaced and kept up an aboiteau at or near the mouth of the creek for the common benefit of the proprietors of said bodies, and that such proprietors have always contributed their fair and reasonable proportion of the expense, and that such proportion has been determined in analogy to the method by which extra expense would ordinarily be determined under the statutes of the province relating to marsh Forrest and the New Marsh, and the defendant is a proprietor whereby the proprietors covenanted among themselves respecting and establishing such a liability is set out and by reason of prescription or lost grant a liability of defendant is set up. The second claim is under an assessment alleged to have been regularly made by virtue of the Cumberland Sewers Act.

The plaintiff is one of the proprietors in bodies A, the Forrest and the New Marsh, and the defendant is a proprietor in bodies A. C. the Forrest body and the New Marsh. As to the claim made under the head of prescription or lost grant, *Roach v. Ripley*, 34 N. S. R. 352, was relied upon, but an examination of that case convinces me that it is founded upon a definite agreement between the predecessors in title of the respective parties creating a liability that ran with the land; while I am asked here to presume a tenure or liability under which defendant's lands came to him charged with the liability set up. I am confronted by the fact that all the lands in question are situate within organised bodies of marsh lands, that such lands are and have been organised under the Sewers Acts apparently as far back as any evidence of contribution is established, and I think I must assume that not only were the contributions taken by virtue of the acts relating to compulsory payments by proprietors but that the evidence very clearly establishes that all contributions to which references were made expressly purported to be made under and by virtue of such acts. The Sewers Acts in question seem to have been in force and in operation further