

latter part of § 3) which declared that "la valeur des travaux sera constatée par l'inspecteur que la compagnie aurait droit de nommer." The company named Mr. Beaudry inspector; and he determined the whole matter. It is contended he went beyond his functions, but it seems to me that the object of his nomination and the provision in the contract were to determine to what amount work had been done according to the terms of the contract. He allowed for the work as if the stone had been measured before being broken, and there are circumstances to support this view. The stone was purchased by the company from the farmers along the line of the road, and had a suitable measurement as piled by them. It was by the company furnished to the contractor as so many toises. He may be presumed to have broken the stone according to the toise measure by which it was delivered to him, and no other reliable measurement having been made, it seems to me this measurement must stand, although it may possibly work a hardship to the contractor. He seems also to complain of the result, having, as he pretends, been promised that he would lose nothing by the contract. This may be so, but there is no legal proof of it, and as regards the damages, he was certainly in default as to time, and what the inspector allowed should stand. He is allowed \$150 for extra work, which he could not have recovered for want of a writing had it been disputed. I would allow the judgment to stand.

Judgment confirmed.

*Robidoux & Fortin* for appellant.

*Loranger & Beaudin* for respondent.

#### COURT OF QUEEN'S BENCH.

MONTREAL, September 23, 1884.

Before DORION, C. J., RAMSAY, TESSIER, CROSS, BABY, JJ.

COURNOYER-PAULET et al. (defts. below), Appellants, and GUEVREMONT (plff. below), Respondent.

*Servitude—Dam—Rights of proprietor of inferior lands.—C. S. L. C., cap. 51.*

*The proprietors of inferior lands on a stream have an action of damages against the proprietor of the superior lands for any inter-*

*ference with the flow of water which aggravates the servitude to which the inferior lands are subject.*

The appeal was from a judgment rendered by Mr. Justice Gill in the district of Richelieu, condemning the appellants to pay \$40 damages caused by the flooding of respondent's land. The action was instituted in the first place in the Circuit Court, for \$99, and was evoked to the Superior Court. The appellants are owners of a mill on the 1st River Pot-au-Beurre, in the Parish of Sorel, which mill is worked by the water of the stream, and the damming of the water, it was alleged, caused the respondent's fields in the vicinity to be flooded and part of his hay to be injured. The judgment of the court below held that chapter 51 of the Consolidated Statutes of Lower Canada does not deprive the owners of lands lying along streams of the common law right to claim damages caused by mill-owners erecting dams for the purposes of their mills.

RAMSAY, J. This suit seems to have been got up to illustrate all the evils which may be made to attend on our extraordinary system of practice. It certainly cannot have been instituted or carried on for any practical advantage to either of the parties. We have loose pleading, no settled plan of attack or defence, in other words no conception of legal rights, and a consent *enquête* at length about everything and anything, elaborated by the intelligent speculation of the short-hand writer.

The action is for damages done to hay on 10 or 12 acres of very low-lying land at the mouth of a creek known as the Rivière Pot au Beurre. The story of the appellant is this, that his men went to cut hay on the 15th of August, 1880, that they worked three days and cut 900 bundles, that on the night of the 17th, the weather being beautiful, they went to sleep in the barn on the land, and that when they awoke in the morning there was a high wind and the water was lapping against the sills of the barn, and when they went out they found that the river had risen four feet and inundated the land and destroyed or greatly injured the hay, and they say the damage amounted to \$200. They also depose that the cause of the damage was