

this aboiteau. It is comprised within the outer lines of the holdings of the proprietors. It is the area which is substantially benefited by this aboiteau across the creek, and which has borne and was charged with the burden of its construction and upkeep. When the 1870 aboiteau was constructed, it was the proprietors of this area who were taken into account in requisitioning the commissioner, and who bore the burden of its construction. It was the proprietors of this area who bore the cost of repairs to that aboiteau made in the years 1870, 1889, 1894, 1900 and 1902. The former records of this area, previously to 1870, have been apparently lost, but it is quite clear that the proprietors of this area constructed the 1850 aboiteau and kept it up. It may be that the New Marsh, the area between the dykes now unnecessary, which was first reclaimed by the construction of the 1850 aboiteau, bore its share of the burden for the first time, but there is nothing to shew that this area with that exception did not since the first structure bear the burden of an aboiteau across the creek.

The succession of commissioners for this area has been kept up. Previously to the selection of this plaintiff in 1907, the proprietors of this area had selected, as far back as 1889, George W. Forrest and A. B. Pipes, the brother of this defendant. Before them, in 1870, Nelson Forrest and Jonathan Pipes, under whom he holds, had been selected as commissioners. The requisition to them to construct the 1870 aboiteau is in evidence. Before them Isaac L. Forrest, who built the 1850 aboiteau was commissioner.

After the defendant and his predecessors in title have for this long period regarded this area as the area benefited and charged with the construction and upkeep of an aboiteau across the mouth of this stream, he comes in very late to complain. If physical changes had taken place, rendering the remote areas more equitably liable to contribute than formerly there might be a different case. But to attempt to bring them in when they have no doubt their own special burdens to bear (one has a canal to look after), after such a long outstanding acquiescence, would, I think, seriously disturb the respective rights of these people. They could have provided other walls against the sea if the aboiteau was to be allowed to go out. There must be some delimitation, more or less arbitrary, made when it has to be determined in advance what area of lands will be benefited by a particular work, how far the benefit will extend. Of course, it is