made or had in any part of Canada for work to be done, or goods, wares, or merchandise, or other things to be sold, delivered, or agreed for by weight or measure, where no special agreement is made to the contrary, shall be deemed and taken to be made and had according to the standard weights and measures fixed and defined by this Act." It results from the first and second sections of the statute that the standard foot is the English foot. The French foot is, by the first sub-section of the 13th section, declared to contain seventy-nine hundredths of an inch more than the English foot. If it was intended to contract by the French measure, it should have been so stipulated. The judgment below was conformable to this view, and we confirm it.

There was a point mooted as to the form of the condemnation, which has merely the effect of a joint condemnation against all the defendants, which was all that was asked by the conclusions of the declaration. The defendants are not aggrieved by this. It is less than might have been asked, and the plaintiffs do not complain of it.

Judgment confirmed with costs.

Fontaine & Co., and *Hall & Co.*, for plaintiff.

Mercier & Co., for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1881.

Before JOHNSON, J.

GOULET v. STAFFORD.

Damages—Negligence—C. C. 1054.

A shutter from an upper story slipped off its hinge while defendant's servant was opening it. Held, that although there was no gross negligence on the part of the servant, yet her employer was responsible for injuries sustained by the plaintiff, in consequence of the shutter falling upon her.

JOHNSON, J. The plaintiff was walking in the public street, and a shutter from an upper story of a house in the occupation of the defendant fell upon her, breaking the right clavicle, and she was rendered unable to work for some time. She now sues for damages; and the defendant pleads that he was not guilty of any carelessness or negligence, and that, if the plaintiff has suffered any damage, it did not arise from any act of his, or of those for whom he is responsible.

Articles 1053 and 1054 C. C. settle the law; Art. 1053: "Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill." 1054: "He is responsible, not only for the damage caused by his own fault, but also for that caused by the fault of persons under his control, and by things which he has under his care."

The fact is that the shutter slipped off the hinge when the servant girl of the defendant was opening or shutting it. There was no gross fault on her part. She was handling a very dangerous and stupid contrivance, which, I see by the papers, has caused frequent so-called accidents. The defendant, under article 1054, is clearly responsible for her acts, or rather for the consequences of them. The only thing said for the defence was that there was no "fault" on the part of the defendant or his servant, and that it was inevitable accident. "Fault" is the word used in the law. It means, says Guyot, Rep., vol. 7, page 296, an act done by ignorance, unskilfulness or negligence. The *onus probandi* is on the party charged to show there was no negligence. (*Holmes* v. *McNeven*, 5 L. C. J. 271.) Of course, there was no inevitable necessity for the defendant to use shutters. If he does so, he must see that they are hung so as to be used with safety to others.

The only question is as to the amount of damages under the circumstances. The plaintiff has proved conclusively that for five weeks her arm was tied up, and useless; and is even now of impaired strength. Her sufferings were considerable from privation of sleep caused by the pain. She had been earning a dollar and a half a day; and it is also proved that her trade is that of an ironer at a shirt maker's, and the injury was to the right shoulder which will in future always be lower than the other.

There is no doubt a right to considerable damages; and it is no answer nor part answer to her claim that she has received something from a benefit society to which she, and her fellow operatives contributed. She has only by her own providence and that of others got back in part what she and they have contributed; and the defendant has nothing to do with that at all. But in settling the damages, I come to a techni-