

of the effects of the digue du No. 1, with the effect of the dam complained of by plaintiff. We have then the simple question before us, namely, whether the work constructed by defendants has interfered materially with the water-power of plaintiff. In support of the action we have the opinion of the experts favorable to plaintiff's pretensions. This opinion is, of course, entitled to great attention; but its force depends entirely on the reasons put forth by experts in support of their opinion, and the measures they have taken to arrive at a correct conclusion. If there be no reasons given for their opinion, and if the proces-verbal of their proceedings gives the Court no idea of the things they did to verify the facts on which their opinion is based, we can only be guided by the evidence, unless we are to delegate our functions to these mechanical engineers. Now if we turn to the evidence of plaintiff it is impossible to say that by it, even standing alone, the action is proved. It would perhaps be going too far to say that there is no evidence, for certain facts are positively sworn to that go to maintaining plaintiff's pretensions, but these facts are not conclusive. The witnesses are, one and all, people without scientific education, and evidently unable to express their meaning intelligibly about a scientific fact, the value of which they have learned to appreciate by experience. On the other hand we have the facts so unsatisfactorily advanced, contradicted by witnesses better prepared to give evidence than those of plaintiff, if not more trustworthy. It seems to me that plaintiff has shown that possibly, nay probably, he is suffering by the dam complained of. I think also that the question in issue is of the simplest kind, and that if the *experts* had used proper precautions, which they may have done, and reported them to the Court, we should have been enabled readily to arrive at a satisfactory conclusion. I would therefore set the report aside, reverse the judgment and charge *experts* to report as to the effect of the dam on the water-power of plaintiff, and as to the damage it causes, if any. The only alternative is to dismiss the action. To maintain the action is to hold that the evidence satisfactorily establishes plaintiff's pretensions, but the reference to the *experts* shows it did not, and on looking at their report we have not an additional fact. They deliver the judgment which the Court adopts on their authority

without a single fact. In the case of *Ellice v. The Board of Works*, decided about eighteen years ago, this Court held that the opinion of the Provincial arbitrators, unsupported by reasons, added nothing to the case, although they visited the locality and gave their opinion as *experts* under a special provision of the Statute. To arrive at any other conclusion is to make the *experts* the actual judges of the case.

TESSIER, J. Les principales questions qui se présentent dans cette cause sont de savoir : 1o. Si la Compagnie manufacturière de St. Hyacinthe, qui possède le fonds supérieur avec un pouvoir d'eau en exploitation, peut se plaindre du refoulement ou reflux des eaux, causé par le possesseur du fonds inférieur à cause d'une nouvelle construction ou barrage par ce dernier ; 2o. Si la Compagnie manufacturière ayant la première, mis en opération là des usines et moulins, doit être protégée contre l'appelant Isaïe Fréchette dont les usines et moulins ont été construits longtemps après ceux de l'intimé.

La Compagnie manufacturière de St. Hyacinthe allègue dans son action contre l'appelant Fréchette, qu'elle est en possession de moulins mus par les eaux de la rivière Yamaska depuis 60 ans ; elle cite et produit ses titres de propriété et ceux de ses auteurs, qui remontent jusqu'à 1816 ;—qu'en 1878, Isaïe Fréchette, qui possède le fonds inférieur, a construit dans le lit de la rivière un barrage, ou a élevé sa chaussée qui fait remonter et refluer l'eau dans le canal d'échappement de la Compagnie manufacturière, ce qui a l'effet de retarder la marche des roues et turbines de ses moulins. Elle conclut à ce qu'il soit ordonné au dit sieur Fréchette d'abaisser la dite chaussée ou barrage, ou de les démolir, et de payer en outre \$1,000 pour les dommages soufferts.

A cette action, le sieur Fréchette a opposé diverses exceptions, par lesquelles il appert qu'il a, par lui et ses auteurs, acquis cette propriété qu'il possède, et que ses moulins y ont été mis en opération depuis 1851, c'est-à-dire plus de 30 ans après la date de l'acquisition des auteurs de la Compagnie manufacturière de St. Hyacinthe.

Ces deux propriétés en exploitation sont du même côté de la rivière Yamaska ; celle du sieur Fréchette est sur le fonds inférieur, et reçoit une partie des eaux de cette rivière dont