liable to the prescription of two years. But we do not think it necessary to decide the point in the present case ; at the same time we do not wish it to be supposed that we shall feel bound by the decision of the Superior Court, should a case arise presenting the question of prescription in another form. We think that the case before us presents a question of continuous damage, and in the absence of a special plea it is impossible to determine when the damage arose so as to be within the rule of prescription of two years. For instance, in the present case the earth to raise the level of the street was deposited more than two years before the institution of the action, but it does not follow that any actual damage arose then. It may have been months and weeks before the full effect of the alteration was manifest, and it is not sufficient to say that there was a protest two years and six months before, for such a protest may be for impending damage, to prevent any presumption of acquiescence.

On the part of the City no evidence has been produced. On the part of the appellants it is established beyond doubt that the roadway has been raised considerably above its level at the time the houses in question were built. It is not, however, proved that the appellants specially procured any level from the officers of the corporation before building ; but this is of no consequence, as it is in evidence that these houses were built after Dubord street was opened and used as a public thoroughfare. I think it is also established that the appellants have suffered damage, if not of very great amount, of a very appreciable kind, by the elevation of the level of the street, at least as regards one of the houses. The respondents' pretension is that however great the damage may be, and however directly it may result from their act, such act was legal, and that under the statutes concerning the Corporation of Montreal, the general clauses granting powers to do certain things, or rather certain classes of things, are to be construed as being rights accorded to the corporation to do these things, even to the positive injury of individuals, without indemnity, when such indemnity is not specially reserved by the statute. In support of this proposition the case of *Corporation of Montreal & Drummond** has been quoted. It would not be difficult, I think, to distinguish this case from the one referred to, and to show that the element of negligence is really the one now to be considered, and takes the case entirely out of the category in which the respondents desire to place it. The right to raise the level of a street does not seem to imply the right to inundate the neighbouring property. Making a street is a well-defined operation. In its ordinary acceptation it implies drainage and water courses, and some sort of adaptability to the contiguous properties, and I cannot conceive that the corporation by upsetting a quantity of earth into a street, by which a hollow is converted into an embankment, can escape from the liability of their act, on the pretext that they were raising the level of a street.

But apart from this distinction, and were it conceded that this case presented a question identical with that of *Drummond & The Corporation of Montreal*, I do not think we would be absolutely bound by a single decision in that sense. There is doubtless some inconvenience in inferior courts refusing to accept as conclusive in all other analogous cases, the decision of a higher tribunal. At the same time I am inclined to believe that the authority of precedent has never been considered as in itself perfectly conclusive, and the mass of over-ruled cases supports this view. The occasion which seems to justify over-ruling is when the precedent is plainly *contra rationem juris*. Now, with all due deference for the opinion of the Judicial Committee, I am bound to say that the decision in the case of *Drummond & The Corporation of Montreal* appears to me to be open to this objection. I cannot believe that their Lordships have perfectly seized the reasons of our judgment,—probably from the imperfect manner in which they were presented,—nor do I think they have thoroughly appreciated the doctrine expressed by the French writers. I am the more strongly induced to arrive at this conclusion from the reference made by their Lordships to the case of *Drummond & The Corporation of Montreal* in a case recently before them of *Bell & The Corporation of Quebec*.* In the latter case they admit in an unqualified manner that such cases must be decided by the French and not by the English law; and the counsel for the appellant are reminded that

* 22 L.C.J., p. 1.

* 3 Legal News, p. 33.