In accordance with the terms of this Act, a tariff was issued on the 29th January, 1864. This tariff, of course, does not affect the services of bailiffs, and left their remuneration to be otherwise provided for, as for instance to be fixed in the discretion of the justices in each case. In 1870 a statute was passed (33 Vic., cap. 15, Q.) empowering the Lieutenant-Governor-in-Council to make, modify, &c., any tariff of fees payable to high constables, bailiffs, or constables, for their services in the execution of any order of justices of the peace, &c. Under this authority a tariff was passed on the 26th December, 1870. This tariff then still further limited the discretion of the justices. If the costs were calculated under these tariffs they are certainly not overcharged; in fact, it appears by the statement handed in by the High Constable, he might have charged under these tariffs $3.65. But in 1878 an Act was passed to amend and consolidate "the Quebec License Act and its amendments" (41 Vic., cap. 3). By section 225 of this Act, it is provided that "in all prosecutions or actions instituted under any of the articles of this law, before all courts except the Superior Court and the Circuit Court in appealable cases, where the usual tariff of fees prevails, no other costs or fees, excepting those mentioned in the schedule H, shall be claimed or taken by any attorney, clerk, bailiff or constable, or any officer of justice." On referring to schedule H, we find that "the fees to be taken by the clerks of the justices of the peace, recorder, judge of sessions, police magistrate and district magistrate are the same as those contained in chapter 100 of the Consolidated Statutes for Lower Canada." This reference to chapter 100 Consolidated Statutes for Lower Canada is, to say the least, very odd, for it contains no provision for bailiffs and constables at all. But this is of small importance now, for we have section 225 replaced in 1879 by an amending Act, 42 & 43 Vic., cap. 3, sec. 30. This amendment is more perplexing than section 225. It is said no other costs than those mentioned in schedule 4 shall be claimed by any attorney, officer, constable or any other officer of justice," and there is no schedule 4 either in the Act of 1878 or 1879.

There is, therefore, no authority for any charge for the arrest, commitment and conveying the prisoner to gaol. The commitment is, therefore, for an unauthorized sum, and the prisoner must be discharged.*

*Keller* for petitioner.

*F. X. Archambault* for the Crown.

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## COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 3, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY and CROSS, JJ.

GRENIER et al. (plffs. below), Appellants, and THE CITY OF MONTREAL (dfts. below), Respondents.

*Alteration of level of street—Prescription of actions of damages resulting from offences or quasi offences, C. C. 2261, 2267—Cases of Drummond & Corporation of Montreal, and Bell & Corporation of Quebec, commented on—Damages inflicted in doing an act authorized by a statute.*

The appeal was from a judgment of the Superior Court, Montreal, (Johnson, J.,) dismissing an action of damages brought by the appellants against the city, on the ground that the action was extinguished by the prescription of two years (21 L. C. J., p. 215).

RAMSAY, J. This is an action of damages for injury to appellant's property by reason of the alteration in the level of the neighbouring street. The action was dismissed on the ground of prescription of two years, which was not pleaded. Is the action for damages subject to such a prescription, and if so, can it be supplied by the judge? The difficulty arises entirely from the wording of the Code. Under the old law it is evident that no such prescription would apply. But it is argued that "actions" "for damages resulting from offences or quasi-offences, whenever other provisions do not apply," "are prescribed by two years," (2261-2); and that no such action "can be maintained after the delay for prescription has expired," (2267); that no one can be liable for damages except by his fault, and that consequently the right of action for damages must necessarily arise out of a *délit* or *quasi-délit*, which include "positive act, imprudence, neglect, or want of skill," (1053). These words of the Code are very precise, and if we are to give full effect to them, we should, perhaps, have to declare that even the action of damages for a breach of contract was

*This judgment was concurred in by Sir A. A. Dorion, C.J., and Monk, J., and the same decision was rendered in numerous other cases.