

(Dyke No. 3), the head of which was in mid-channel opposite Mill No. 4, and which conducted the water to the defendants' Mill No. 3. The water escaping through the tail race of Mill No. 1 also descended to Mill No. 3, but how it was used there, if used at all, does not clearly appear. Early in the year 1878 the plaintiffs carried Dyke No. 1 up the river to a point above the head of Dyke No. 3, and there connected it with a reef of shingle which extends to the right bank of the river. By this work the whole stream has been intercepted below Mill No. 4 and conducted to Mill No. 1, except when there is water enough to overflow the reef of shingle, and except so much as may leak through the dyke or through the reef. The defendant says that water has thus been taken away from the water-course formed by Dyke No. 3; and in the month of June, 1878, for the purpose as he alleges of recouping himself, he erected a barrier so as to prevent the escape of water from the tail race of Mill No. 1, and to form a head of water for a new mill which he built just below No. 3. The plaintiffs have also built a new mill (Mill No. 2) just below No. 1, and have excavated the bed of the river to receive their new wheels.

There has been considerable controversy whether the defendants' operations have impeded the working of Mill No. 1 or only that of Mill No. 2, but, in their Lordship's opinion, the controversy is not now material. The important fact is that the defendants' barrier has been found to bay back the water to a maximum depth of 22 inches at point A, which is the dividing line of the two properties. And the important question is, whether the plaintiffs are entitled to have the barriers so lowered that the water shall not be bayed back to any extent at all at Point A.

By the Civil Code of Quebec all rights to flowing water are classed under the head of servitudes; and by sect. 500 real servitudes are divided into three classes, according as they arise from the natural position of the property, from the law, or from the act of man. Servitudes arising from the law have nothing to do with the present question.

Sect. 501, which deals with servitudes of the first class, is as follows:—"Lands on a lower level are subject towards those on a higher level to receive such waters as flow

"from the latter naturally and without the agency of man. The proprietor of the lower land cannot raise any dam to prevent this flow. The proprietor of the higher land can do nothing to aggravate the servitude of the lower land."

Sect. 503 applies specially to rivers. It says, "He whose land borders on a running stream may make use of it as it passes for the utility of his land, but in such manner as not to prevent the exercise of the same right by those to whom it belongs, saving the provisions contained in Cap. 51 of the Consolidated Statutes for Lower Canada, or other special enactments." "The same right" their Lordships take to mean the right to make use of the running stream as it passes the bordering land.

Unless then the provisions of the Code are limited by some special enactment, the plaintiffs have a right to say that the flow of water from their land shall not be impeded, so far as it is a natural flow, and independent of the agency of man. In this case the natural flow of the river has been altered by the agency of man for a long time, but an artificial flow may acquire as ample a right to protection as a natural flow.

The 3rd cap. of the 4th title of the Code treats of servitudes established by the act of man. Sect. 545 recognizes the right of every proprietor to subject his property to such servitudes as he may think proper consistently with public order. Sects. 549 and 550 are as follows:—

"No servitude can be established without a title; possession even immemorial is insufficient for that purpose."

"The want of a title creating the servitude can only be supplied by an act of recognition proceeding from the proprietor of the land subject thereto."

"Title," which answers to "titre," means a written or express grant.

Now as regards the flow of water which existed prior to 1878, and which it may be convenient to call the established flow, it is not now disputed but that the plaintiffs became and were, just before the execution of their new works, rightfully possessed (whether by title or by some act of recognition does not clearly appear), of what, according to the