

be diminished, he has no right, under any view of the law, to have the petition dismissed. The preliminary objection of Mr. Bernard, the only respondent in the case, is overruled with costs.

*Lacoste, Globensky & Bisailon* for the petitioner.

*Mercier, Beausoleil & Martineau* for the respondent.

#### RECENT U. S. DECISIONS.

*Nuisance—Conduit pipe leading water from roof into street—Ice on sidewalk from conduit pipe.*—In an action for injury received by plaintiff slipping on ice formed on the sidewalk from water which flowed through a conduit pipe in front of defendant's house across the sidewalk to the street gutter, it appeared that the owner of two houses upon lots numbered 18 and 20, constructed the conduit which led the water from the roofs of both houses through an opening on the party line across the sidewalk upon lot 18, just inside of the line between that lot and 20. Thereafter defendant became owner of 18 and altered the roof of the house upon that lot so that the water therefrom did not go through the conduit, but only the water from the house on 20, and it was the ice from this water upon which plaintiff slipped. At the time of the accident the premises were not in defendant's possession but in that of his lessee. The pipe did not reach the street nor abridge the area of the sidewalk. The trial court charged the jury that defendant was "liable from the fact that he had permitted this pipe to run across his premises and be used by his neighbor," and gave judgment on the verdict against defendant on the ground that the pipe was a nuisance, "and the defendant's liability the same as if the water came from his own premises." At the General Term the judgment was upheld upon the ground that "the leader" was "a nuisance." *Held, error.* A conductor pipe designed to convey water from a roof to the ground when constructed with due care and proper precaution is not a nuisance, even if its mouth is towards the walk and it discharges upon it. To direct rain or watery snow from the roof on to the sidewalk or street, unless prohibited by positive regulation, is not an offence. Once upon the sidewalk and there frozen it may subject the municipality to an action by one slipping on the ice. *Todd v.*

*City of Troy, 61 N. Y. 506.* While under like circumstances it was held in *Kirby v. Boylston Market Association, 14 Gray 249*, that an action would not lie against the property owner and that the remedy for damages so incurred was exclusively against the city. Defendant did not cause the obstruction here nor was he benefited by it. In such a case he was like the owner of land on which a nuisance is erected by a third party. He is not liable for its continuance unless requested to abate it. If he repaired or used it he might be liable. The statement that it is enough to charge a defendant that having acquired title to land after a nuisance was erected he continued it (2 Greenl. on Ev., § 472), must be taken to mean more than an omission to abate or remove it, something amounting to an actual use. As if the defendant simply suffer a dam erected upon his land by a former owner to remain without being used by him, it is no continuance of the nuisance unless he be first requested to remove it. *Pearson v. Glean, 2 Green, 36. Morris Canal Co. v. Ryerson, 27 N. J. Law 459.* To the same effect is *Berwick v. Camden, Cro. Eliz. 520.* See also *Moore v. Dame, Browne 3, Dyer, 319; Brown v. Cay. & Sus. R. Co., 80 id. 212; Irvine v. Wood, 51 id. 224; Clifford v. Dam, 81 id. 56.* The case *Walsh v. Mead, 8 Hun, 387*, distinguished. Judgment reversed and new trial ordered. *Wenzlick v. McCotter.* (New York Court of Appeal, Nov. 22, 1881.)

#### GENERAL NOTES.

Judge Laframboise, one of the Justices of the Superior Court, died very suddenly at Montreal, Feb. 1st. The deceased was born in Montreal in 1821, educated at the Montreal College, and admitted to the bar in 1843. For some years he was engaged in practice at St. Hyacinthe. In 1857 he was elected for Bagot which he continued to represent in the Parliament of Canada until Confederation. In 1863-4 he was Commissioner of Public Works in the Sandfield Macdonald-Dorion Government. After Confederation, from 1871 to 1878, he represented Shefford in the Local Legislature, and in the latter year was appointed Judge for the District of Gaspé.

The following statistics have been prepared of the business of the Montreal Circuit Court during 1881: There were 7,410 writs issued, of which 2,585 were for cases over \$25, and 4,815 for cases under that amount. The number of writs entered in Court was 4,585, and 1,352 cases were contested. Defaults, in which defendants did not appear, numbered 3,283. There were 1,567 judgments delivered on cases contested during the year, and 2,248 judgments given on cases by default or *ex parte*. Judgments given by the Clerk of the Court 588. The total number of judgments was, therefore, for one year, 4,403.