sion of, as if it were a mitoyen wall, although the defendant has never acquired the mitoyenneté of said wall, nor paid the plaintiffs therefor.

Defendant pleads a general denial, and specially alleges that plaintiffs, in erecting their building, have encroached more than four inches upon defendant's property.

The Superior Court (Lafontaine, J.), on the 30th day of December 1909, maintained the action by the following judgment.

"Considering that the fact, whether the wall, built by plaintiffs, projects or not on the property of the defendant has nothing to do with the present litigation, and that this question could be raised only by a petitory action by defendant, or by action *en bornage;*

"Considering that defendant's pretension that, in building on his own property, adjoining plaintiffs' property, has not made use of the gable wall of plaintiffs' store and warehouse, and has arranged things in such a manner that he has his own wall distinct and independent of plaintiffs' wall, is not borne out by the facts, and that on the contrary, it is proved that the defendant has used and is using the plaintiffs' wall, and that, in reality, if plaintiffs' gable wall was not there, the defendant, in reality, would have no proper and sufficient wall, and that, what the defendant calls his wall, is a mere partition made of porous brick, called *terra cotta* which is used only for inside walls but totally unfit for exterior walls to protect from cold and rail; and that these materials are merely used as a backing to receive the plastering;

"Considering that although making *mitoyen* a neighbor's wall, is a faculty of which the owner of a lot, when building on his property, may use or not; this faculty ceases and becomes an obligation where use is made of neighbor's wall;