The Legal News.

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LOCAL JUDGES.

The following gentlemen, being Judges and Junior Judges of the several County Courts of Ontario, are gazetted "Local Judges of the High Court," under the provisions of sect. 76 of the Ontario Judicature Act, 1881:—

James R. Gowan, Simcoe; David S. McQueen, Oxford; Stephen J. Jones, Brant; William Miller, Waterloo; David J. Hughes, Elgin; George M. Boswell, Northumberland and Durham; Zaccheus Burnham, Ontario; John G. Stevenson, Haldimand; Charles J. Robinson, Lambton; Gordon W. Leggatt, Essex; James Daniell, Prescott and Russell; Daniel H. Lizars, Perth; Henry Macpherson, Grey; John Deacon, Renfrew; John J. Kingsmill, Bruce; Alexander F. Scott, Peel; Thomas Miller, Halton; Robert Dennistoun, Peterboro; William H. Wilkison, Lennox and Addington; William Elliott, Middlesex; Walter McCrea, District of Algoma; Robert P. Jellett, Prince Edward; William S. Senkler, Lanark; William Warren Dean, Victoria; William A. Ross, Carleton; Thomas B. MacMahon, Norfolk; James S. Sinclair, Wentworth; Kenneth Mackenzie, York; Edmund J. Senkler, Lincoln; Cornelius V. Price, Frontenac; Jacob F. Pringle, Stormont, Dundas and Glengarry; Archibald Bell, Kent; Herbert S. Macdonald, Leeds and Grenville; Thomas A. Lazier, Hastings; George Baxter, Welland.

JUNIOR JUDGES.

George McK. Clark, Northumberland and Durham; John Boyd, York; John A. Ardagh, Simcoe; Isaac F. Toms, Huron; Austin C. Chadwick, Wellington; Anthony Lacourse, Waterloo; Geo. H. F. Dartnell, Ontario; Robert Lyon, Carleton; Frederick Davis, Middlesex; E. Baldwin Fraleck, Hastings.

A NOVEL JUDICIAL DUTY.

In a document recently circulated, entitled "Judicial Reforms, proposed by the Commission for the Codification of the Statutes," considerable changes in established procedure are suggested. There is one feature of the "Reforms" at which, we imagine, our Judges will be likely to stand aghast. At p. 97, "errors of calculation, of drafting, *and all faults of caligraphy, when apparent*, are corrected by the Courts themselves," &c. Faults of *caligraphy* are so apparent that the Judges have frequently to send down records in order that the penmanship may be rendered legible,—that an undecipherable document may be replaced by one that can be deciphered. It was only a few days ago that the Hon. Mr. Justice Johnson, to the great amusement of the Bar, held up a paper in Court, and asked whether any optical aids existed by which its contents could be ascertained.

THE LAWS AGAINST BODY SNATCHING.

The *Scientific American* complains of the severity of the laws against robbing grave-yards in order to procure subjects for dissection, and says it is a false sentimentality that makes us unwilling to see the remains of our relatives mutilated. If this be true, medical men should be the first to demonstrate their superiority to such scruples, and we think, therefore, the suggestion which our contemporary proceeds to make is a good one. It is this: "Let every medical student solemnly swear, as he stands with uplifted scalpel before his first subject, that in return for the privilege of dissecting others, he agrees to give up his own body after death for a like purpose. The medical fraternity owe it to their successors to form a mutual dissecting league, and thus render themselves independent of the general public." Besides the advancement of science, dissection presents some incidental advantages, for while burning and burying alive are possible, vivisection is not to be feared, for it is said that the first stroke of the scalpel will detect the faintest spark of lingering life.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, May 31, 1881.

JOHNSON, TORRANCE, RAINVILLE, JJ.

[From C. C., St. Francis.

MILLIKEN, es qual. v. BEARD.

Accession—Rights of owner of material which has been used to form a thing of a new description.

The plaintiff inscribed in Review from a judgment of the Circuit Court, District of St. Francis, Doherty, J., Jan. 31, 1882.

JOHNSON, J. The plaintiff revendicated a quantity of lumber. The defendant pleaded that he had made it into shingles; and he wants to apply the law so as to compensate the value sought to be recovered by the plaintiff, by the value of the workmanship. This is really the only

question in the case; for though he pleaded also a permission, and there was a qualified permission, there can be no pretence that the defendant ever acquired the right to take these cedar stumps which belonged to the plaintiff, and convert them into shingles without paying him anything for the material. The judgment dismissed the plaintiff's action, regarding the permission as proved. We do not take the same view of the evidence. The conclusion of the action asked for the thing revendicated or for $125 as the value of the thing. Under the law regarding the right of accession in relation to moveable property, of which article 435 C.C. is the principal expression—as relied on by the defendant—we say now, as we said at the hearing, that this is in principle and effect an expropriation, and the defendant cannot expropriate or acquire in his own person the right of property, without first paying the original proprietor. He should have pleaded in good faith, and offered the $125. We therefore reverse, and condemn the defendant to pay the value ($125), and costs below, and here.

Brooks, Camirand & Hurd, for plaintiff.

Hall, White & Panneton, for defendant.

COURT OF REVIEW.

MONTREAL, May 31, 1882.

JOHNSON, TORRANCE, RAINVILLE, JJ.

[From C.C., Beauharnois.

LABERGE v. RODIER.

Rente viagère—Action by transferee—Opposition à fin de charge by transferor.

The case was inscribed by the plaintiff, in Review of a judgment of the Circuit Court, Beauharnois, Bélanger, J.

JOHNSON, J. The plaintiff is *cessionnaire* of a *rente viagère* due by defendant under his title from the Sheriff.

An old lady by the name of Marguerite Gélineau—at least that was her maiden name—widow of Pierre Emard—was entitled to this *rente*, under a donation made by her and her husband, and the property chargeable with it had changed hands several times until it got into the possession of the defendant under a sheriff's sale; but it was still chargeable with the rent—an opposition *à fin de charge* having been allowed. Before the sheriff's sale the old lady had sold her right to the plaintiff in this case; and after the sheriff's sale he, the present plaintiff, signified the transfer to the defendant, who, on being sued for the amount by the transferee, the present plaintiff, contends that the title to the *rente* in question is not the transfer to the plaintiff; but the judgment on the opposition *afin de charge*, which was made by Marguerite Gélineau, and granted to her in her own name. The Court is of opinion that the judgment on the opposition is not the foundation, or the only foundation, of Marguerite Gélineau's right. That judgment only preserved the right, whatever it might have been; and its having been transferred to Laberge did not prevent its being asserted in her name by the opposition; and the signification by plaintiff of the transfer to him after the sheriff's sale can make no difference. The action itself would have been sufficient notice apart from the question of costs. Therefore, we must reverse this judgment which maintained the defendant's plea.

T. Brossoit, for plaintiff.

L. A. Seers, for defendant.

COURT OF REVIEW.

MONTREAL, May 31, 1882.

JOHNSON, TORRANCE, RAINVILLE, JJ.

[From S.C., Ottawa.

WRIGHT v. MOREAU et ux.

Rentes constituées—Liability of détenteur.

The détenteur of a property subject to a constituted rent is not personally liable therefor, in the absence of any personal undertaking on his part.

The inscription was by the defendant, in Review of a judgment rendered by the Superior Court, District of Ottawa, McDougall, J., Jan. 26, 1882.

JOHNSON, J. The question in this case is one of extreme simplicity. On the 4th November, 1833, Wright, or his predecessors, sold to the father of the present defendants, a lot of land. On the 22nd July, 1869, the father gave to his son and to his wife the same lot subject to a life rent to the donor. In this donation there is no mention whatever of the *rente constituée* for which the present action is brought against the defendants, to recover from them personally. The only point made at the hearing was that the plaintiff, who is trying to recover a *rente constituée* created by the first deed, has no

personal action now against the defendants, in the absence of any personal undertaking on their part; but merely the action *hypothécaire* against them as *détenteurs*. It was answered that by Art. 99 of the *Coutume de Paris*, there is a personal liability; but it is clear that that article does not apply to *mere rentes constituées*; article 100 of the *Coutume* makes that quite clear; and the commentary on it of Mr. Ferrière is in these words: "Cet article a été mis à la réformation de la coutume pour servir d'interprétation au précédent; mais parce que l'article précédent *ne se peut entendre que des rentes foncières*, et autres charges réelles et annuelles, et non des rentes constituées à prix d'argent, et que ce qui est dit en cet article ne convient qu'aux rentes constituées, il a été ajouté très mal-à-propos par les réformateurs, comme plusieurs autres." So that Ferrière is of opinion that Art. 100 is superfluous, and there never could have been any doubt, even without it, that Art. 99 never reached to *rentes constituées*.

Then the plaintiff made further answer that the defendant had acknowledged the personal obligation, and made a payment. There is nothing in this. He made a payment of his father's debt—not of his own.

Judgment reversed.

Laflamme & Co., for plaintiff.

A. Rochon, for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 23, 1881.

DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

FRECHETTE (deft. below), Appellant, and LA COMPAGNIE MANUFACTURIÈRE de ST. HYACINTHE (plff. below), Respondent.

Servitude—Land on lower level.—C. C. 501.

The action en démolition de nouvel œuvre lies against the owner of land on a lower level of a stream, who has built a dam so as to obstruct the flow from a higher level, and thus weaken the power which has been previously used by the owner of the upper level to propel his machinery.

The fact that the work complained of has been completed does not affect the right of action for its demolition.

The Statute, Consol. Stat. L. C., Cap. 51, which provides that proprietors of lands may improve water courses adjoining them, and may erect dams, etc., but shall pay damages, to be ascertained by experts, which result from such works to others, does not apply to the case where the owner of the upper level already has works in operation, and does not deprive him of the action en démolition.

The appeal was from a judgment of the Superior Court, District of St. Hyacinthe, Nov. 4, 1880, maintaining an action *en démolition de nouvel œuvre*.

RAMSAY, J. (*diss.*) This is an action *en démolition de nouvel œuvre* and for damages. There does not appear to me to be anything particularly mysterious or difficult in understanding the nature of this action, nor am I aware that the Code has in any way modified it. Like all other civil actions no sacramental words are required for its validity, but the plaintiff must express in ordinary language what is necessary to obtain it. The code has, therefore, said nothing more in this respect than was said in the Judicature Act of 1849. The learned judge in the Court below seems to have been desirous of escaping from the *dictum* of the Privy Council in the case of *Brown* v. *Gugy*, (2 Moore's P. C. cases, p. 341, N. S.) and I do not wonder at it. But the proper mode of getting over such a difficulty is to put in question the correctness of the decision. I think it may safely be said that neither the Roman law nor any other law laid down the rule that a work could not be demolished on an action brought after the work was finished. What the Privy Council found was that the Roman interdict was given where there was shown to be a possible injury. The interdict obliged the party who was making the construction to give security that if it proved injurious he would demolish and pay damages. The work being finished, such an interdict would have been of no use. Not observing this distinction, the Privy Council have unfortunately been induced to say: "By the old French law in force in Lower Canada, the action *dénonciation de nouvel œuvre*, can only be brought by a person to stop the progress of a work, which, if completed, would be injurious to him. Such action must be brought whilst the work is in progress." I do not know if my colleagues concur in the view I take, but I presume they do, as they are going to confirm.

The judgment of the Court below gave the plaintiff $100 damages, and ordered the demo-

lition of defendant's dam (the work complained of), so as not to exceed 22 inches in height. The defendant appeals. Both parties set forth their titles, which call for no special remark. I presume it was intended to base some argument on the former rights of Seigniors to the whole water powers, and therefore to the right of extending their works beyond the limits of any particular property. It seems to me that all claims dependent on these rights, except in so far as these rights were actually being exercised at the time, have been swept away by the Seigniorial legislation, and we have therefore to examine into the contestation of two riparian proprietors who stand on a perfectly equal footing. The difficulty appears to arise in this way—the Appellant, a manufacturing company, possessed of very extensive water privileges above the line of defendant's property, complains that the defendants have maliciously put a dam, useless to them, which, however, obstructs the flow of water from their tail-race, and thus weakens the power by which their machinery is propelled. To this defendants, in effect, answer, that they have only exercised their rights as riparian proprietors, and that if any damage is caused they are not responsible, that in fact they have not stopped the natural flow of the water, but that the plaintiff has, by increasing his own works above, directed the waters of the river out of their natural course, and so created an artificial accumulation of water which can only escape by the tail-race; that furthermore, by these works of plaintiff, defendants were obliged to construct the dam complained of by plaintiff in self-defence, for that plaintiff's new works had deprived defendants of the water that would naturally have flowed to their mill. Defendants also deny that there was any damage. In addition to this they plead that they can at all events only be condemned to damages, for that by a statute, styled—"an act respecting the Improvement of Water-courses," a proprietor may improve the water-power opposite his own property to the destruction not only of his neighbour's property, even if it be a water-power, and that for this such proprietor is only liable in damages, and that he cannot be compelled to remove the obnoxious structure. Moreover, these damages can only be established by an *expertise*. I am not surprised that the Act in question should form matter for extraordinary pretensions. It is a wonderful piece of legislation, and appears to be the work of some one equally ignorant of the laws of nature, of those of this country, and of the general principles of jurisprudence. I don't know the particular history of this Act, but I fancy its existence can be readily explained. It first graced our Statute-book in 1856, being sanctioned on the 1st of July of that year, eleven days after the Seigniorial Act of 1854 had been "further amended." Evidently it occurred to some acute person that the Seigniors being deprived of their riparian rights they would devolve to the Crown, and that it was desirable to present them to his electors. The mode was immaterial, and hence we have the statute in question. I cannot think that the Act can have any further significance than this—that each riparian proprietor should possess the water-privilege opposite his own land, and that if any one sought to obtain damages from him for an injury done, these damages should be established by an *expertise*. To interpret the Act to mean that there was to be no action but this for damages, no matter what a proprietor might do under pretext of improving a water-course, would be at once to destroy all notions of property and any possible object, that can be avowed, in favour of the Act. Again, the estimation of damages has been made by *expertise*, and therefore it would appear that all technical objections to the action are disposed of, and we have only to enquire as to the merits. These present serious difficulties, for the question of fact is rather complex. We have to consider the effect of the extension by plaintiff of dam No. 1, and also the effect of the dam complained of.

With regard to the first of these works, it is evident that however practically correct the defendants' objection may be to the extension of dam No. 1, and the restraining of the water so collected down to the point of division of their line and that of plaintiff, it can have no effect in this case. Defendants have endured, nay they have concurred in the existence of this work. They have themselves constructed a dam almost parallel, of the same sort, which runs up the river higher than their division line, coming constantly opposite the property of the plaintiff. Again, they have joined the end of the quai du No. 3, with their dam, and make use of it. Therefore it is clear they cannot mix up this question

of the effects of the digue du No. 1, with the effect of the dam complained of by plaintiff. We have then the simple question before us, namely, whether the work constructed by defendants has interfered materially with the water-power of plaintiff. In support of the action we have the opinion of the experts favorable to plaintiff's pretensions. This opinion is, of course, entitled to great attention; but its force depends entirely on the reasons put forth by experts in support of their opinion, and the measures they have taken to arrive at a correct conclusion. If there be no reasons given for their opinion, and if the proces-verbal of their proceedings gives the Court no idea of the things they did to verify the facts on which their opinion is based, we can only be guided by the evidence, unless we are to delegate our functions to these mechanical engineers. Now if we turn to the evidence of plaintiff it is impossible to say that by it, even standing alone, the action is proved. It would perhaps be going too far to say that there is no evidence, for certain facts are positively sworn to that go to maintaining plaintiff's pretensions, but these facts are not conclusive. The witnesses are, one and all, people without scientific education, and evidently unable to express their meaning intelligibly about a scientific fact, the value of which they have learned to appreciate by experience. On the other hand we have the facts so unsatisfactorily advanced, contradicted by witnesses better prepared to give evidence than those of plaintiff, if not more trustworthy. It seems to me that plaintiff has shown that possibly, nay probably, he is suffering by the dam complained of. I think also that the question in issue is of the simplest kind, and that if the *experts* had used proper precautions, which they may have done, and reported them to the Court, we should have been enabled readily to arrive at a satisfactory conclusion. I would therefore set the report aside, reverse the judgment and charge *experts* to report as to the effect of the dam on the water-power of plaintiff, and as to the damage it causes, if any. The only alternative is to dismiss the action. To maintain the action is to hold that the evidence satisfactorily establishes plaintiff's pretentions, but the reference to the *experts* shows it did not, and on looking at their report we have not an additional fact. They deliver the judgment which the Court adopts on their authority without a single fact. In the case of *Ellice* v. *The Board of Works*, decided about eighteen years ago, this Court held that the opinion of the Provincial arbitrators, unsupported by reasons, added nothing to the case, although they visited the locality and gave their opinion as *experts* under a special provision of the Statute. To arrive at any other conclusion is to make the *experts* the actual judges of the case.

TESSIER, J. Les principales questions qui se présentent dans cette cause sont de savoir: 1o. Si la Compagnie manufacturière de St. Hyacinthe, qui possède le fonds supérieur avec un pouvoir d'eau en exploitation, peut se plaindre du refoulement ou reflux des eaux, causé par le possesseur du fonds inférieur à cause d'une nouvelle construction ou barrage par ce dernier; 2o. Si la Compagnie manufacturière ayant la première, mis en opération là des usines et moulins, doit être protégée contre l'appelant Isaïe Fréchette dont les usines et moulins ont été construits longtemps après ceux de l'intimée.

La Compagnie manufacturière de St. Hyacinthe allègue dans son action contre l'appelant Fréchette, qu'elle est en possession de moulins mus par les eaux de la rivière Yamaska depuis 60 ans; elle cite et produit ses titres de propriété et ceux de ses auteurs, qui remontent jusqu'à 1816;—qu'en 1878, Isaïe Fréchette, qui possède le fonds inférieur, a construit dans le lit de la rivière un barrage, ou a élevé sa chaussée qui fait remonter et refluer l'eau dans le canal d'échappement de la Compagnie manufacturière, ce qui a l'effet de retarder la marche des roues et turbines de ses moulins. Elle conclut à ce qu'il soit ordonné au dit sieur Fréchette d'abaisser la dite chaussée ou barrage, ou de les démolir, et de payer en outre $1,000 pour les dommages soufferts.

A cette action, le sieur Fréchette a opposé diverses exceptions, par lesquelles il appert qu'il a, par lui et ses auteurs, acquis cette propriété qu'il possède, et que ses moulins y ont été mis en opération depuis 1851, c'est-à-dire plus de 30 ans après la date de l'acquisition des auteurs de la Compagnie manufacturière de St. Hyacinthe.

Ces deux propriétés en exploitation sont du même côté de la rivière Yamaska; celle du sieur Fréchette est sur le fonds inférieur, et reçoit une partie des eaux de cette rivière dont

la Compagnie manufacturière se sert comme force motrice et qu'elle renvoie, par son canal d'échappement, vers les moulins du sieur Fréchette, qui se trouvent plus bas dans le cours des eaux de cette rivière. Chaque partie, d'après la preuve et un plan qui l'explique, exploite les eaux de cette rivière vis-à-vis du fonds dont il a la propriété riveraine. Le sieur Fréchette reçoit toute la partie des eaux dont la Compagnie manufacturière se sert et, de plus, une autre partie, à l'aide d'une chaussée qu'il a fait construire en travers de la rivière Yamaska.

Un peu avant 1878, la Compagnie manufacturière bâtit un nouveau moulin, et allongea sa chaussée ou barrage dans une partie de la rivière vis-à-vis de son terrain, et amena plus d'eau dans son canal ou coursier, mais en la remettant toujours à son cours naturel par le canal d'échappement.

En 1878, le sieur Fréchette exhaussa un barrage sous ses moulins d'au moins deux pieds de haut; la conséquence fut que l'eau reflua vers les roues motrices ou turbines des moulins de la Compagnie, et en retarda la marche régulière en causant dommage à cette dernière.

De là la présente action, qui fut signifiée peu de temps après.

Le défendeur Fréchette objecte, en premier lieu, que la Compagnie n'a pas, en loi, la présente action en démolition de ce nouvel œuvre, parce que l'œuvre était déjà accompli. Elle invoque le droit romain, en comparant cette action à l'un des interdits du droit prétorien.

Sans entrer dans une longue discussion sur ce point, il me semble qu'il y a là une confusion d'idées dans leur application à la présente cause. "Les interdits différaient profondément des actions proprement dites".... "Le préteur n'a point la prétention de trancher définitivement le litige".... "Comme magistrat, chargé de faire les règlements de police, il intimait les ordres nécessaires pour prévoir les autres voies de fait." 2 Bonjean des Actions, Nos. 321, 322, 338.

C'était un remède temporaire pour régler la possession actuelle, comme dans le cas d'un bref d'injonction, mais cela ne détruisait pas le droit d'action devant le tribunal compétent.

Dans la présente cause, ce n'est pas seulement une procédure *en dénonciation, "nunciatio novi operis,"*—mais c'est une action au fond *en démolition* de nouvel œuvre. C'est une action réelle négatoire pour faire déclarer que le pouvoir d'eau et les moulins de la Compagnie manufacturière ne sont soumis à aucune servitude envers l'exploitation de M. Fréchette. Il me semble que cette action est bien portée.

La seconde objection faite par le défendeur Fréchette, c'est que la Compagnie n'aurait droit, dans tous les cas, qu'à des dommages, mais non pas à une démolition du nouvel œuvre. On invoque sur ce point le Statut 19-20 Vict. c. 104, reproduit dans le chap. 51, Statuts Refondus du Bas-Canada. Mais on oublie que ce Statut a été introduit pour protéger ceux qui voulaient bâtir des moulins et se servir de pouvoirs d'eau vis-à-vis de ceux qui ne s'en servaient pas, mais non pas de ceux qui avaient déjà des usines en opération. Ce serait faire servir ce droit statutaire à un but tout contraire à celui pour lequel il a été introduit. Si c'était le cas, le propriétaire du fonds inférieur à celui de M. Fréchette pourrait bâtir un moulin et aurait le droit de faire refluer l'eau de la rivière vers ses usines et les arrêter, et dire: "je vous paierai les dommages seulement; le statut précité m'autorise à faire refluer les eaux sur les propriétés riveraines au-dessus de la mienne en payant les dommages seulement." Cette prétention est évidemment mal fondée. Le Statut en question, à la sect. 3me, dit: "qu'en estimant les dommages, les experts pourront établir une compensation avec la plus value qui pourrait résulter *aux propriétés des réclamants* à raison de l'établissement de tels moulins, etc." Ce n'est donc pas que les propriétaires de terre, à qui le voisinage de moulins peut être utile, non pas les autres propriétaires de moulins voisins, qui doivent naturellement souffrir de la concurrence.

Ce moyen me paraît donc mal fondé. Ce statut, promulgué en 1856, a eu pour but d'encourager l'exploitation des cours d'eau, à l'avenir, non pas de nuire à ceux qui étaient déjà exploités.

La troisième exception du défendeur est plus sérieuse; elle invoque les titres de propriété du défendeur, qui remontent à 1851. Le défendeur nie le fait de causer des dommages à la Compagnie manufacturière, et prétend que c'est la Compagnie manufacturière qui lui en cause.

Sur ces points, une longue preuve a eu lieu, et il faut admettre qu'il y a certaines contradictions parmi les témoins. En pesant leurs té-

moignages, on s'aperçoit que la preuve produite de la part de la Compagnie est plus correcte, logique et concluante. Cependant dans une matière spéciale comme celle-ci, il convenait bien de référer les questions de fait à des gens de l'art pour éclairer l'opinion du juge et préciser, par une inspection et visite des lieux, l'effet de la construction nouvelle sur le reflux des eaux de la rivière Yamaska vers les usines de la Compagnie manufacturière et le chiffre des dommages. C'est ce que les parties ont en apparence compris elles-mêmes, parce que la référence à experts du 4 février 1879 exprime que cela a eu lieu sur "*motion* de la requérante, à laquelle les défendeurs ont acquiescé." Les parties ne s'accordant pas sur la nomination des experts, le juge les nomma, savoir, Thomas Pringle, mécanicien, de Montréal, H. M. Perrault, ingénieur et architecte, de Montréal, E. H. Parent, ingénieur, de Grenville.

Ces trois experts, gens parfaitement qualifiés, contre lesquels il n'a été allégué aucun soupçon, pas même de partialité ou d'incompétence, visitèrent les lieux les 12 et 13 Août 1879, examinèrent le dossier, la preuve et les titres des parties, et firent un rapport unanime en date du 28 Janvier 1880, portant en résumé : "que le barrage fait par les défendeurs est une construction en madrier de trois pouces avec poteaux, protégée par une chaine de pierre ; ce barrage formant coursier d'amont (*head race*) fournit l'eau des moulins à planer des dits défendeurs, mais ce barrage, tel que construit, fait refouler l'eau sur la propriété de la demanderesse à une hauteur d'environ deux pieds à la ligne de division entre les parties en cette cause.

"En réponse à la 4ème question, ils sont d'avis, après avoir pris des niveaux sur le parcours des lieux en litige entre les parties en cette cause, que les défendeurs doivent baisser leurs travaux de barrage ci-dessus décrits, entre la rue St. Hyacinthe et le hangar à outils, de 22 pouces, de manière à ne pas refouler l'eau sur la propriété de la dite demanderesse au-delà du point marqué A sur le plan figuratif ci-annexé.

"En réponse à la 5ème question, ils sont d'opinion que les dommages causés à la dite demanderesse par le fait des travaux de barrage des dits défendeurs ci-dessus décrits n'excèdent pas la somme de $100."

La cour inférieure à St. Hyacinthe a adopté les conclusions de ces experts, et prononcé un jugement final suivant ces conclusions.

Le principe qui doit nous guider dans la décision de cette cause se trouve énoncée dans l'art. 501 de notre Code Civil, comme suit : "Les fonds inférieurs sont assujettis envers ceux qui sont plus élevés à recevoir les eaux qui en découlent naturellement sans que la main de l'homme y ait contribué. Le propriétaire inférieur ne peut pas élever de digues qui empêchent cet écoulement."

Dans l'espèce actuelle, les eaux qui découlent du fonds supérieur occupé par la Compagnie manufacturière intimée, sont les eaux de la Rivière Yamaska ; elles y coulent naturellement du fonds supérieur au fonds inférieur. La Compagnie n'a rien ajouté au volume de l'eau par "la main de l'homme," elle n'y a amené artificiellement aucune autre rivière, source ou ruisseau ; elle s'est servi de l'eau de la Rivière Yamaska vis-à-vis de son terrain pour les besoins de ses moulins et usines, comme elle en avait le droit, et elle renvoie l'eau à son cours naturel vers le fonds inférieur occupé par M. Fréchette, mais celui-ci *élève une digue qui empêche cet écoulement*. Il est donc en contravention au principe posé dans cet article absolu de notre Code.

La jurisprudence française fournit des arrêts dans ce sens. Dalloz, Jurisp. générale, *anno* 1856, pp. 289, 296.

Curasson, Actions possessoires, pp. 33, 34, No. 24, dit : "Le voisin établit un barrage qui détourne les eaux qui me sont nécessaires..... ou bien le barrage qu'il pratique au-dessous de ma propriété (exactement le fait dont se plaint la demanderesse en cette cause), y fait refluer les eaux..... empêche le roulement de mon moulin..... dans ces cas et autres semblables, le nouvel œuvre, quoique pratiqué par une partie sur son propre fonds, donne lieu à l'action possessoire."

Curasson, p. 276 : "Si le propriétaire de l'usine inférieure a procuré, dans l'année, à son barrage un exhaussement qui fasse refouler les eaux et entrave le mouvement du moulin supérieur, alors le propriétaire de cette usine sera bien fondé à agir en complainte."

Daviel, régime des eaux, Vol. III, No. 844.

La même jurisprudence prévaut dans les Etats-Unis. Angell, on Water Courses, p. 538, No. 341 : "Where the proprietor of a mill, and a definite proportion of the water power or flow

of water in a stream, makes a change in a sluice way, which occasions an increase of back water, injurious to the mill of a neighboring owner, who is also part owner of the water power, the latter is entitled to maintain an action therefor."

Le jugement dont est appel est d'accord avec les principes qui sont énoncés dans la jurisprudence ; il nous paraît correct en droit et conforme à la preuve et aux titres produits par les parties. Cette Cour confirme ce jugement et rejette l'appel avec dépens.

Judgment confirmed.*

Lacoste, Globensky & Bisaillon, for appellant.

Geoffrion, Rinfret, Laviolette & Dorion, for respondent.

* An appeal has been taken to the Privy Council from the above decision. See the opinion of Mr. Justice Stuart, in the case of *Proulx* v. *Tremblay*, Court of Review, Quebec, 7 Q. L. R. pp. 360-363.

GENERAL NOTES.

The Hon. Geo. A. Walkem, Q. C., of Victoria, B. C., has been appointed one of the Puisné Judges of the Supreme Court of British Columbia, *vice* Mr. Justice Robertson, deceased.

Mr. G. W. Burbidge, of St. John, N.B., has been appointed Deputy of the Minister of Justice, in the place of Mr. Lash, resigned.

The Hindoo English author of a "Memoir of the late Honorable Justice Onoocool Chunder Mookerjee" thus describes the merits of the subject of the memoir before his elevation to the Bench: "Since he joined the native Bar down *ad finem* of his career as a pleader, he had won a uniform way of pleading. He made no gairish of words, never made his sentences long when he could express his thoughts in small ones. Never he counterchanged strong words with the pleaders or barristers of the other party. In defeating or conducting a case his temper was never incalescent and hazy. He well understood the interest of his client, and never ceased to tussle for it until he was flushed with success, or until the shafts of his arguments made his quiver void. He was never seen to illude or trespass upon the time of court with fiddle-faddle arguments to prove his wits going a-wool-gathering, but what he said was nude truth, based upon *jus civile*, *lex non scripta*, *lex scripta*, etc., and relative to his case and in homogeneity to the subject-matter he discussed, and always true to the points he argued. He made no quotation having no bearing whatever to his case, but cited such acts, clauses and precedents that have a direct affinity to his case, or the subject-matter of his argument. By-the-by, I should not here omit to mention that he had one peculiarity in his pleading which I have observed very minutely. Having first expounded before the court the anatomy of his case, he then launched out on the relative position of his client with that of the other, pointing out the *quidpro-quo* or bolstering up the decision of the lower court with his sapience and legal acumen and cognoscence, waiting with quietude to see which side the court takes in favorable consideration, knuckling to the arguments of the court, and then inducing it gradually to his favor, giving thereby no offence to the court."

It is by no means an uncommon occurrence now-a-days, for parties to an action to conduct their cases in person, and the practice is by no means confined to male litigants. In a recent instance, where an action was brought by a lady against the Right Hon. W. H. Smith, the First Lord of the Admiralty in the last Conservative Administration, for alleged improper detention of certain securities and documents referring to her income and sanity, for not handing them back to her, on his going out of office, and for libel, the plaintiff had apparently prepared the pleadings herself, in addition to coming into court to support them in person. Her claim was certainly unique. It ran as follows: "The plaintiff claims 40,000*l*, and all legal expenses and outstanding debts paid, and pawn-tickets redeemed, a public apology, and all libels contradicted in all the public newspapers, foreign, domestic and English, and the committal of those who slandered and libelled her, and forged and lithographed her name, to Newgate for life, with twenty strokes from the cat-o'-nine tails on the back of each person." Does not the fact that it is possible for a litigant to pursue a claim such as this, to the Court of Appeal, suggest that there is no sufficient check upon the early stages of frivolous actions?—*Law Times*.

In *Dagg* v. *Dagg*, 51 L. J., N. S. 19, the plaintiff, a porter, sued a female cook in a hydropathic establishment for dissolution of a marriage founded on the following agreement: "This is to certify that whereas the undersigned parties do agree that they will marry, and that only to save the female of us from shaming her friends or telling a lie; and that the said marriage shall be no more thought of except to tell her friends that she is married (unless she should arrive at the following accomplishments, namely, piano, singing, reading, writing, speaking and deportment); and whereas these said accomplishments have in no way been sought after (much less mastered), therefore the aforesaid marriage shall be and is null and void; and whereas we agree that the male of us shall keep his harmonium in the aforesaid female's sitting-room, and agree that it shall be there no more than four months, and that from that time the aforesaid and undersigned shall be free in every respect whatsoever of the aforesaid female, as witness our hands, etc., Catherine L. H. Jeffries, William Pritchard Dagg."

The London *Law Times*, in commenting upon the lawyers in the House of Commons and in the Senate of the United States, says:—It is a matter of common historical knowledge that towards the end of the 16th, and during the earlier part of the 17th century, the House of Commons included among its members a very large proportion of the legal profession, whose energy and eloquence earned for them from Lord Bacon the title of "the *literæ vocales* of the House." In later times, even if their actual number has not diminished, it is certain that their proportion to the remainder of the House has become smaller, and it is more than certain that they have never attained the preponderance that the profession enjoys in the Legislature of the United States. In the Senate of that country, no less than fifty-seven out of seventy-six members are lawyers, and in the Lower House as many as 195 out of the 293 representatives; in other words, more than two-thirds of the whole Legislature belong to the legal brotherhood.