THE MONTREAL STREET RAILWAY COMPANY (DEFENDANTS). } APPELLANTS.

AND

ANGELINA BOUDREAU AND OTHERS (PLAINTIFFS)..... } RESPONDENTS.

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*May, 9, 10

*June, 13.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Operation of machinery—Continuing nuisance—Negligence—Droits du voisinage—Vibrations, smoke, dust, etc.—Series of torts—Statutory franchise—Permanent injury—Abatement of nuisance—Prospective damages—Method of assessing damages—Limitations of actions—Prescription of actions in tort—Arts. 377, 379, 380 *and* 2261 *C.C.*

Where injuries caused by the operation of machinery have resulted from the unskilful or negligent exercise of powers conferred by public authority and the nuisance thereby created gives rise to a continuous series of torts, the action accruing in consequence falls within the provisions of art. 2261 of the Civil Code of Lower Canada and is prescribed by the lapse of two years from the date of the occurrence of each successive tort. *Wordsworth* v. *Harley* (1 B. & Ad. 391); *Lord Oakley* v. *Kensington Canal Co.* (5 B. & Ad. 138); and *Whitehouse* v. *Fellowes* (10 C.B.N.S. 765) referred to.

In the present case, the permanent character of the damages so caused could not be assumed from the manner in which the works had been constructed and, as the nuisance might, at any time, be abated by the improvement of the system of operation or the discontinuance of the negligent acts complained of, prospective damages ought not to be allowed, nor could the assessment, in a lump sum, of damages, past, present and future, in order to prevent successive litigation be justified upon grounds of equity or public interest. Judgment appealed from reversed, the Chief Justice and Girouard J. dissenting. *Fritz* v. *Hobson* (14 Ch. D. 342) referred to. *Gareau* v. *The Montreal Street Railway Co.* (31 Can. S.C.R. 463) distinguished.

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*PRESENT:—Sir Elzéar Taschereau C.J. and Girouard, Davies, Nesbitt and Idington JJ.

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APPEAL from the judgment of the Court of King's Bench (1), appeal side, reversing, in part, the judgment of the Superior Court, District of Montreal, (Fortin J.), and increasing the damages claimed by the action of the plaintiffs, with costs.

The action was instituted in December, 1902, by the proprietors of property in the vicinity of the power house of the Montreal Street Railway Company, in the City of Montreal, and alleged that the company constructed immense works and installed heavy machinery therein, in 1893, for the operation of their system of electric tramways; that since then the company added to the constructions so erected and increased the power of their machinery, particularly during the years 1896 and 1897, and since that time; that the machinery has been and still is in operation both day and night and constitutes a continual nuisance and source of injury to the owners and tenants of the property in question, and renders the buildings thereon erected uninhabitable. The action claimed damages (*a*) for depreciation in value of the land, $3,233, (*b*) for loss of rent since 1893, $800, and (*c*) for inconvenience, diminution in the enjoyment of the property, troubles and damages generally caused to the dwellings, $1,500, making a total of $5,333, damages past and future claimed on account of the continuing nuisance resulting from the operation of the defendants' works.

By their defence, in addition to pleading the general issue, the company specially denied that any depreciation in value had taken place and that if any depreciation had taken place it was not their fault; alleged

(1) Q.R. 13 K. B. 531.

that the property is situate in a manufacturing district and was, when the power-house was constructed, unsuitable for residential purposes, and that if the plaintiffs or their tenants have suffered inconvenience it is only what should be reasonably expected in view of the nature of the locality and the character of the buildings in the vicinity; that the company's buildings and the work carried on therein are proper and suitable to the locality, necessary for the purpose of carrying out the objects of public convenience for which the company was incorporated, lawfully erected in a skilful and proper manner in virtue of the powers, franchises and privileges conferred upon the company by law, and could not constitute grounds for a claim for damages, nor are they a nuisance to the neighbouring proprietors; that the operations are carried on with due and proper care; and they further pleaded prescription.

The case was tried without a jury by Mr. Justice Fortin, who maintained the action in part only, holding that the defendants had caused to the plaintiffs, by the operation of their power-house by vibration, smoke, soot, etc., certain damages, which he estimated and fixed at $300 for the two years preceding the institution of the action. The remainder of the claim was disallowed on the grounds, (1) that any damages suffered more than two years before the institution of the action were prescribed, and (2) that no permanent damages or damages to be suffered in the future could be allowed as the defendants might, at any time, discontinue their operations or so modify them as to put an end to the inconvenience complained of. Judgment accordingly went for $300 and costs.

The plaintiffs appealed from this judgment with

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the result that the court of appeal increased the damages awarded to $1,500, the reasons given being that the defendants had abused their rights to the detriment of the plaintiffs and caused them inconvenience exceeding what a neighbour is required to endure; that this violation of the rights of neighbourhood (*droits du voisinage*) continued from 1893 to the time the action was instituted, and that under the circumstances, prescription under art. 2261 C.C., did not apply, and that defendants' establishment was of a permanent character which had the effect of unduly depreciating the value of the plaintiffs' property. The court then preceeded to declare that it was in the interest of the parties to settle once for all and definitively, both for the past and for the future, the damages resulting from the operation of the defendant's power-house, fixed the amount of the damages so suffered at $1,500, and gave judgment for that increased amount with costs.

From this judgment, the present appeal is taken by the defendants who submit that the judgment of the Superior Court should be restored.

Campbell K.C. and *Hague* for the appellants. The court below in assessing damages and including future damages due to the assumed permanency of the nuisance complained of did not frame the judgment on the principle of *Gareau* v. *Montreal Street Railway Co.*(1) in such a way as to render that judgment, if accepted, a final settlement of all damages. On the contrary it gave respondents $1,500 unconditionally and simply upon their action as brought, that is to say for the damages suffered. The conclusions are, thus, inconsistent with the reasons

(1) 31 Can. S.C.R. 463.

upon which the judgment is based. It appears also from the special reasons given by Lacoste C.J. that the appeal court disagreed with the Superior Court on the question of prescription, on the ground that the nuisance was continuous and, so long as it continued, prescription did not run; and, on the question of future damages, distinguished this case from *Drysdale* v. *Dugas*(1) in which no future damages were allowed. The learned Chief Justice explains that the $1,500 was made up of $1,000 for depreciation in the value of the property, and $500 for loss of rent and general damages, but that the court purposely awarded a lump sum in order to leave more latitude in the event of the case being carried further.

In the first place the appellants take issue on the plaintiffs' title to the properties in respect of which damages are claimed. At the time of the action the plaintiffs had merely a right of redemption in this property, having sold it *à droit de reméré* several months previously. This constituted complete alienation, subject to the condition, and divested the plaintiffs of any right to the present action: Arts. 1546, 1547, 1553, 1554, 1560 C.C.; *Bourque* v. *Lupien*(2); *Lamontagne* v. *Bédard*(3); *Salvas* v. *Vassal*(4).

The evidence does not justify the claim that the value of the property was depreciated owing to the vicinity of the power-house and the finding of the trial judge in this respect should not have been interfered with, and nothing should be awarded for depreciation in values as a result of the construction and operation of the power-house. It appears that the character of the locality, having been always more or

(1) 26 Can. S.C.R. 20.
(2) Q.R. 7 S.C. 396.
(3) Q.R. 14 S.C. 442.
(4) 27 Can. S.C.R. 68.

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less a manufacturing district, is now becoming entirely so, and consequently the houses are becoming less desirable to tenants as the result of such changed conditions and neglect to keep the buildings in proper repair. The question of depreciation is purely a matter of fact, as to which the trial court should not be reviewed by a court of appeal. *Cossette* v. *Dun*(1) *per* Gwynne J. at page 257; *Gingras* v. *Desilets*(2; *Ryan* v. *Ryan*(3) *per* Gwynne J. at page 406.

The trial court allowed no future damages. The appellate court has, however, taken them into consideration. In this they were clearly in error. The court cannot adjudicate beyond the conclusions: art. 113 C.P.Q.; *Cheveley* v. *Morris*(4); *Watkins* v. *Morgan* (5). No future damages were claimed; the claim was confined to damages actually suffered at the time the action was taken, and plaintiffs' counsel strenuously objected to evidence of any facts subsequent to that time. There is nothing in the judgment appealed from to prevent a fresh action for continuing the alleged nuisance. It is an unconditional absolute award beyond the conclusions of the declaration, and, as such, clearly irregular and *ultra vires*.

Even if future damages had been prayed for they should not have been awarded. If damages were suffered, they resulted not from the construction or existence of the power-house, but from the operation of the machinery. In *Drysdale* v. *Dugas*(6) such damages were refused, and there is no reason in the present case to adopt a different rule. The appellants were clearly within their rights in building the power-house and in installing machinery therein. The only

(1) 18 Can. S.C.R. 222.
(2) Cout. Dig. 95.
(3) 5 Can. S.C.R. 387.
(4) 2 W. Bl. 1300.
(5) 6 C. & P. 661.
(6) 26 Can. S.C.R. 20.

complaint can be that they have been operating their machinery in such a way as to interfere with their neighbours' rights. If they have done so it is the negligent or wrongful method of operation and not the mere operation of the machinery (*per se* a lawful act) which is the sole cause of the damage complained of. The court had no right to presume the continuance of wrong-doing, nor the infliction of injuries in the future. Art. 1053 C.C. makes no provision for anticipation of damages that might occur in the future even from the same cause of action. It is clearly impossible for any court to say what future conditions will be. The nature of the locality may change irrespective of the presence of the power-house; the operations may, at any time, be discontinued or so modified as to do away entirely with complaint. The methods adopted in modern machinery are constantly changing, and there is no reason why the court should assume that the present conditions will be eternally the same. The permanent character of the buildings and the length of the charter have nothing to do with the question. In *Carpentier* v. *Ville de Maisonneuve*(1), the nuisance complained of was from an establishment for supplying electric light; the court refused to assume that the nuisance complained of would be permanent. In France future damages are sometimes allowed, but always on condition that the actual state of things continues and with the reservation that the parties are always free to ask that the amount of the damages be increased or reduced. 6 Laurent, No. 152, p. 207; Pand. Fr. Rep. "Etablissements dangereux," No. 688-689; Dalloz, Supp., "Manufactures," No. 88; 4 Aubry & Rau, No. 308. Even assuming anything to justify condemnation

(1) Q.R. 11 S.C. 242.

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in respect of future damages, the court of appeal has neglected to avail itself of the conditions and restrictions which the jurisprudence of France so reasonably requires. If the power-house were to cease to exist or to cease operations to-morrow, appellants will have compensated respondents, in advance, for purely chimerical damages based upon mistaken anticipations.

In respect of any damages suffered more than two years before the action was taken the two years' prescription under art. 2261 C.C. must apply. Whatever damage was done was the result of acts the time of which was certain and fixed before the action was taken. The damages for loss and general inconvenience were fixed and certain then, and the damage which subsequent acts of negligence might cause was entirely distinct and as such constituted a new cause of action. *Kerr* v. *The Atlantic & North-West Railway Co.*(1), *per* Taschereau J.; *Breakey* v. *Carter*(2). Two years before the present action was instituted the respondents might have sued for loss of rent and inconvenience to the extent of the damages which they had then suffered for two years before, and which they are now including in this action. Surely, having neglected to take the action then, they are now debarred from their right under art. 2261 C.C. The damages may be of the same nature, but they are not the same damages. See also *Wilkes* v. *Hungerford Market Co.*(3).

Mignault K.C. and *Lamothe K.C.* for the respondents. As the defendants did not appeal from the judgment of the Superior Court decreeing their responsibility, the only questions which can arise under

(1) 25 Can. S.C.R. 197. (2) Cout. Dig. 1143.
(3) 2 Bing. N.C. 281.

the present appeal are: First, Was the action prescribed as to any damages suffered more than two years previous to its institution? Secondly, Have the plaintiffs the right to claim damages for permanent depreciation of their property and buildings? We will therefore not refer any further to the question as to title nor discuss whether the defendants are in law responsible for damages caused by vibration, noise, etc., inasmuch as they have not appealed, and because this point has been conclusively settled by *Gareau & The Montreal Street Railway*(1) and *The Montreal Water and Power Company* v. *Davie* (2).

As to the contention of the appellants that they are exercising powers conferred upon them by their charter of incorporation and are exempt from liability for damages caused thereby, see *Canadian Pacific Railway Co.* v. *Roy*(3); *Royal Electric Co. & Hévé* (4); *Montreal Water and Power Co.* v. *Davie*(2). If this ground was a good defence surely they should not have acquiesced in the judgment of the Superior Court.

The damages suffered cannot be prescribed under art. 2261 C.C., which establishes a prescription for damages resulting from offences or quasi-offences. The damages in the present instance resulted from a continuing cause, and from a violation of the law of neighbourhood, and being, as such, damages due under a quasi-contract rather than by reason of a *délit,* the prescription applicable to offences and quasi-offences could not apply. Where the cause of damage is a continuing one damages for the whole

(1) 31 Can. S.C.R. 463; Q.R. 10 K.B. 417.
(2) 35 Can. S.C.R. 255.
(3) [1902] A.C. 220.
(4) 32 Can. S.C.R. 462.

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period during which the cause of damage has existed can be claimed. *Kerr* v. *The Atlantic and North-West Railway Co.*(1); *The Town of Truro* v. *Archibald* (2); Rép. gén. jur. Belge, *vo.* "Prescription," No. 59; Sourdat, "Responsabilité," vol. 2, No. 1485; *Grenier* v. *City of Montreal*(3); *Bell* v. *Corporation of Quebec*(4); *Robert* v. *City of Montreal*(5); *Beauchemin* v. *Cadieux*(6). This is an implied quasi-contract whereby each proprietor obliges himself to so use his property as not to damage his neighbour's, and damages resulting from the prejudicial use of his property are not subject to the prescription of two years under art. 2261 C.C. which applies to *délits*. See *Breakey* v. *Carter*(7); Pothier, 2nd Appendix to the Treatise on Partnership, Nos. 230, 241 (ed. Bugnet, vol. 4, p. 330, No. 235); Baudry-Lacantinerie, "Biens," No. 217; "Propriété," No. 223. The appellants claim that they have exercised every precaution in installing their machinery; they deny that they have been guilty of any fault, but assert that they have only exercised their rights. Under these circumstances, if they are responsible for any damage by reason of the use they make of their property, and their responsibility is now *res judicata,* they cannot claim the benefit of the two years' prescription affecting offences or quasi-offences, the first characteristic of which is the illegality of the act complained of. Consequently the claim was not barred by prescription of two years, and the plaintiffs are entitled to claim all damages suffered by them from the time of the establishment of the power-house down to the institution of the action.

The Court of King's Bench was clearly right in

(1) 25 Can. S.C.R. 197.
(2) 31 Can. S.C.R. 380.
(3) 25 L.C. Jur. 138.
(4) 2 Q.L.R. 305.
(5) 2 Dor. Q.B. 68.
(6) Q.R. 22 S.C. 482.
(7) Cout. Dig. 1143.

considering the power-house as a permanent institution. The depreciation caused to the property is of a permanent nature, and there is no hope of the property ever regaining its former value. We are entitled to damages for inconvenience or loss of enjoyment, and also to damage resulting from the depreciation of the property itself, and from the impossibility of disposing of it. All our rights of property, the rights of enjoyment, use and disposal, have been affected by the power-house, and the depreciation being an actual fact all damages can be recovered. See Dalloz, Supp., *vo.* "Manufactures, fabriques et ateliers," Nos. 86, 88, 176; Req. 8 mai 1850, *Affaire Cartier*(1); Req. 20 février 1849, *Affaire Desrone*(2); Paris, 18 mai 1860, *Affaire Robin*(3); Dalloz, Supp. *vo.* "Propriété," No. 70; 2 Aubry & Rau (5 ed.) p. 307, par. 194; Clerault, des établissements dangereux, ch. VIII., No. 130; Serrigny, de l'organization et de la compétence, No. 870; 2 Sourdat, de la responsabilité, 1189 et 1191; 12 Demolombe, 1, Nos. 654, 660; 6 Laurent, Nos. 136, 146, 152, 153; Req. 4 mai 1827, S.V., 27, 1, 435, 436; Cass. 17 juillet 1845, S., 45, 1, 825; *St. Helen's Smelting Co.* v. *Tipping* (4); *Baltimore & Potomac Railroad Co.* v. *Fifth Baptist Church*(5).

The Court of King's Bench has considered it in the interests of the parties to put an end to any further litigation, and granted $1,500.00 for all damages, past, present and future, including the depreciation of the property and the loss of the enjoyment and use of the same, following *Gareau* v. *The Montreal Street Railway Co.*(6). The appellants acquiesced in a condemna-

(1) Dal. 54, 5, 655.
(2) Dal. 49, 1, 148.
(3) Dal. 60, 2, 116.
(4) 11 H.L. Cas. 642.
(5) 108, U.S.R. 317; 137 U.S.R. 568.
(6) 31 Can. S.C.R. 463.

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tion of $300 for two years, and consequently every two years they can be called upon to pay a similar sum. The only difference between the parties now is $1,200, which will put an end to further litigation and cover all damages. This judgment was most fair and equitable for all parties, and the respondents are willing to accept this award in final satisfaction of their claim.

The Superior Court concluded that no damages beyond two years preceding the action, or of a permanent character could be granted, and did not pass upon the evidence relating to depreciation of the property, or to loss of enjoyment. Consequently the Court of King's Bench was the first to pass on this evidence. That court made a most careful study of the evidence and, in its opinion, this evidence is stronger than the evidence in the *Gareau Case*(1). That finding is fully justified by the evidence, and should not be interfered with on appeal.

THE CHIEF JUSTICE (dissenting).—I dissent from the judgment of the majority of the court for the reasons stated by Mr. Justice Girouard.

GIROUAIRD J. (dissident).—Tout en partageant l'opinion de M. le juge Fortin qu'une réclamation comme celle des demandeurs se prescrit par deux ans, aux termes de l'article 2261 du Code Civil, je suis arrivé à la conclusion que la cour pouvait et devait même mettre fin au litige tant pour le passé que pour l'avenir.

L'établissement de l'intimée, qui est la cause des dommages, a été construite à perpétuelle demeure, et fait même partie de l'immeuble; art. 377, 379, 380

(1) 31 Can. S.C.R. 463.

C.C.; et il est raisonable de considérer la cause des dommages comme permanente. Cette règle de droit s'impose comme nécessité de la situation; sans elle, le propriétaire serait sans remède efficace. Par example, veut-il vendre pendant la durée de la nuisance qui est cause du dommage à sa propriété ? De suite, il subit une diminution du prix proportionnelle au dommage souffert. Pour lui ce dommage se fait sentir d'une manière permanente et c'est de cette manière que les tribunaux doivent l'apprécier.

Il n'y a aucun texte de loi qui s'oppose à cette décision. Il y a de plus une grande raison d'équité et d'intérêt public de l'adopter; elle tend à empêcher la multiplicité des procès. Je concours pleinement dans le judement de la cour d'appel et particulièrement les motifs suivants:—

Considérant que l'établissement de l'intimée a un caractère de permanence, ce qui influe davantage sur la valeur actuelle de la propriété des demandeurs et la déprécie notablement;

Considérant qu'il est de l'interêt des parties de régler une fois pour toutes et définitivement tant pour le passé que pour l'avenir, les dommages qui résultent de l'exploitation de l'usine de l'intimée;

Considérant que les dommages s'élèvent à la somme de $1,500.

DAVIES J.—I concur in the reasons stated in the judgment of Mr. Justice Nesbitt.

NESBITT J.—In this case the plaintiffs sued as proprietors of a property contiguous to the power-house of the company alleging that owing to the negligent operation of the company's works damage was suffered.

The trial judge held that the plaintiffs were limited to the recovery of damage by the prescription of two years under art. 2261 of the Civil Code and could not recover for permanent damage. The Court of King's Bench held that the prescription did not ap-

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ply and also assessed damages as for a permanent injury and gave a sum to represent the damage once for all.

In my view, the action was one for tort and the negligence gives rise to a continuous series of torts which can be brought to an end by the defendant discontinuing the act and is within the article of the Code referred to, and the damages prescribed by two years' limitation.

The power-house of the defendants is on their own land and its operation is the cause of the tort to the plaintiff and cannot in the eye of the law be recoggarded as permanent no matter with what intention it is built. The work is done by public authority but so negligently as to cause injury to the plaintiffs and it is to be supposed will be remedied and the plaintiffs, therefore, can recover only for loss to the date of the tort, although in one case where the nuisance was abated before the trial the damages, on the ground of convenience, were assessed up to the time of the abatement of the nuisance. See *Fritz* v. *Hobson*(1); *Wordsworth* v. *Harley*(2); *Lord Oakley* v. *Kensington Canal Co.*(3); *Whitehouse* v. *Fellowes*(4).

In the case of works authorized by law, where the power of expropriation is given upon due compensation, the rule has grown up of assessing the damages once for all, since the work complained of is assumed to be permanent and the defendant would have the right to erect the works complained of upon setting the necessary machinery of the law in train. In the case of trespass upon the plaintiff's land where, to remedy the wrong, another trespass would have to be committed, the injury is not continuing but inflicted

(1) 14 Ch.D. 542.
(2) 1 B. & Ad. 391.
(3) 5 B. & Ad. 138.
(4) 10 C.B.N.S. 765.

once for all and full compensation is to be recovered in one action and so in actions of personal tort causing injury to the person. I think, therefore, the course pursued by the court below, while calculated to put an end to successive litigation and in the interests of the parties, was not justified and the judgment of the trial judge should be restored with costs.

IDINGTON J.—The learned trial judge, properly as I think, disallowed respondent's claim for past damages beyond the time limited by art. 2261 of the Civil Code.

He also refused, I think properly, to allow prospective damages.

He omitted making any allowance for damages to the buildings or to the property itself as reduced in value by anything that happened up to the time of the action being begun and, in this respect, he may possibly have erred.

It is impossible, considering the way in which the evidence has been given, to form a satisfactory opinion as to what damages may have happened to the property within the two years preceding the action. If these damages should, in the judgment of the respondents, be substantial, I think, in the result I am about to state, they should have an opportunity of having such damages assessed in respect of the causes of action confined to the two years in question and beyond the damages which the learned trial judge has allowed here for the loss in respect of the use or current enjoyment of benefits or profits from the use of the property during the said two years.

The Court of King's Bench, in appeal, has estimated damages upon a basis that includes prospective damages. It is possible, on the evidence, to arrive at a reasonable amount on that basis if prospec-

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tive damages are allowable for the evidence was given looking to that result. I am of opinion, however, that, in allowing prospective damages, the appellate court has erred.

Holmes v. *Wilson*(1) decided that an action for "keeping and continuing a buttress" on the land of another after the recovery for the trespass of erection can be maintained.

Thompson v. *Gibson*(2) seems expressly in point, for there it was held that an action for continuing a nuisance will lie. Numerous cases are cited. Some of them go to shew that the assignee of the property could bring an action even though he might have the right to abate the nuisance. This was in 1841, for damages to a market by the erection of a building.

Battishill v. *Reed*(3) illustrates the damages that might be allowed for injury to the property and admits and approves the principle upon which the foregoing cases rested. The action was brought by a reversioner only and he was restricted, therefore, to the amount actually necessary to be spent upon the structure to remove the cause of offence.

Bankart v. *Houghton*(4) was a case where judgment was recovered at common law and then a bill filed to restrain execution thereof and also future actions on the ground of acquiescence. The motion was dismissed, the court holding that acquiescence could not be relied on as an answer to damages.

In *Backhouse* v. *Bonomi*(5) it was held, relying upon these cases and others, that the action for future subsidence could only be bound by the lapse of time from the subsidence, though the excavation caus-

(1) 10 A. & E. 503.
(2) 7 M. & W. 456.
(3) 18 C.B. 696.
(4) 27 Beav. 425.
(5) 9 H.L. Cas. 503.

ing it had occurred long before. It seems to be conclusive as the judgment of an appellate court of high authority in every respect upon the point of the right to bring the action accruing from the time the damage happens. That seems to involve all the other questions in dispute in this case in relation to the assessment of damages.

Mitchell v. *Darley Mayne Colliery Co.*(1) reiterates all this, reviews the authorities again, overrules *Lamb* v. *Walker*(2), and leaves the law, I think, as I have just stated it.

Hole v. *Chard Union*(3) in the Court of Appeal decided that a nuisance from a sewer created continuing damages and gave actions in the future but the difficuty was overcome there by means of the order xxxvi, R. 58, which provides that:

> Where damages are to be assessed in respect of any continuing cause of action they shall be assessed down to the time of the assessment.

This reiterates the law, shews the modification by apt legislation in England, which we have not got here, to apply to the cases under consideration.

I am constrained to hold, therefore, to the opinion that there cannot in law be any assessment against the will of the parties in regard to prospective damages that will bind all concerned and protect the company against future claims.

If we could import as a principle of action the method adopted in France, as shewn by the authority quoted from Laurent, we could meet these cases admirably. In the absence, however, of legislation I do not see how that can be done here. It seemed to be conceded in argument that such is the case. But this

(1) 14 Q.B.D. 125. (2) 3 Q.B.D. 389.
(3) [1894] 1 Ch. 293.

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was attempted to be met by treating the establishment of the works as permanent, which, as to the location of this power-house in question creating the nuisance, I do not find to be the case.

Gareau v. *The Montreal Street Railway Co.*(1) does not seem to aid us except in recognizing the rights of the respondents to recover damages flowing from the vibrations complained of as produced by appellant's machinery.

This court there suggested an amount that would be proper to allow and that was acceded to by the parties appellant there. What was suggested in argument here as a proper disposition of the rights of the parties, following the lines of that case, might well be worth the parties' while considering, but I fail to see how we can impose our will upon them in the present state of the law.

I would prefer to allow a new trial to enable respondents, if they should desire it, to establish substantial damages to the structure for the two years before their action, but, as that seems impossible, I agree that the judgment of the Court of King's Bench, in appeal, should be reversed, and the judgment of the trial judge restored.

I think the appeal should be allowed with costs.

Appeal allowed with costs.

Solicitors for the appellants: *Campbell, Meredith, Macpherson & Hague.*

Solicitor for the respondents: *J. C. Lamothe.*