

railway, and undertook to keep it in repair, and the defendant purchased a piece of the land adjoining this new road, and which had been subdivided into lots as a speculation. The resolutions of the Council, and the notices required by law in such cases, and the performance and cost of the work of repairing are proved. The question is whether the Municipal Code, in the provisions applicable to these actions generally, applies in the present case, or is to be restricted to the cost of repairs done to *chemins de front* in its first sense, *i.e.*, front roads of farm. The point is a very important one, no doubt; and the defendant relies on art. 825, which says:—"No one is bound to keep in repair on one and the same parcel of land, in a depth of thirty arpents, more than one front road governed by the provisions of this chapter."

It is proved in the case that Rivet and Giguère, the *auteurs* of the defendant, made a regular agreement with the municipality to keep this road in repair, and thereby and on that condition got leave to open it, and it is now contended for the defendant, who purchased from them, that in this deed from Rivet he made no agreement to keep the road in question in repair, and the plaintiffs in the case have never registered the undertaking of Rivet et al., and therefore Dubois, the defendant, who has registered his title without this charge, is free. But it is impossible to hold that the public authority is bound to register its title to the public streets and roads, in whatever way they may have become public property. The formalities once complied with, the public right is vested, and third parties must acquire subject to that right.

The subject is complicated; but I will state as shortly as I can what I consider to be the state of the law. Article 765 states what is a front road: that is, as regards farms and lands of the inhabitants. But if a man, having an extensive farm and a front road to maintain, chooses besides to lay out the back part of his land into lots, and open a road, and undertake to maintain it, there are abundant provisions in this code which give the municipal bodies authority to compel him to keep it in repair, and in his default to do so, to recover the cost of having it done. It is part of Article 765, that "roads in village municipalities are front roads, unless otherwise ordered by the Coun-

cil." Art. 749 lays it down that "land or passages used as roads by the mere permission of the owner are municipal roads," etc. Under Art. 376 "the road inspector is bound to superintend the repairs of local or county municipal roads;" and Art. 397 says that "the road inspector may, without being authorized by the Council, perform or cause to be performed the works required on any municipal front road," etc.; and Art. 399 *et seq.* give the right of action for the cost and the 20 per cent. By Art. 403, "in every such action the evidence of the road inspector, if uncontradicted, is sufficient to prove, 1st, the formalities of notice, etc.; 2nd, the execution and the cost of the works, and, 3rd, that the defendant is the person liable for the same.

All this has been done in this case; and besides all this, there is the agreement of the party to keep up the road; and there would seem to remain only the question or the delusion that because a proprietor is only bound to keep up one front road for his farm, he cannot also give to the public another road through it which he may be bound to keep up by law, besides his own undertaking to do it, and which road when it is once made, is subject to the same rules as to the recovery of the cost of repairs, as the road in front of the farm, which in all cases he is bound to maintain. I must, therefore, give judgment for the plaintiffs for the amount demanded, with costs.

CIRCUIT COURT.

MONTREAL, Sept. 30, 1881.

Before JOHNSON, J.

CHENIER V. CORPORATION OF ST. CLET.

Municipal Corporation—Keeping up fences—Prescription.

The prescription under M. C. 1045 does not apply to an action against a municipal corporation, under M. C. 793, for not keeping up fences.

PER CURIAM. This is another case under the Municipal Code; but here the action is against a municipal corporation for a penalty and damages under art. 793, for not keeping up the fences on a municipal road or *chemin de descente*, which they were bound by *procès verbal* to do.

I feel no difficulty in holding the corporation liable. The only points raised are that the road is not in the corporation of St. Clet, but in that of Ste. Marthe; that the action is prescribed by six months; and thirdly, that the penalty and