or at least none known, the municipality repudiated all responsibility in the maintenance of it, and, though admitting that such a road was to some extent useful, they refused to verbalize it as a public road. They formally declared it to be a *chemin de tolérance*. Now this is an expression to which the municipal code has affixed a special meaning. It is a road, having the appearance of a public road, indicated by lateral fences or otherwise, and open at both ends. While so open it is ranked among Municipal roads—that is, the Municipality is liable for its condition as a public road, although the owners of the ground on which it passes are charged with its up-hold. The expression of the law is not very full, but its object or policy is clear and highly reasonable. To the private proprietor it says, you shall keep in repair any open place on your property to which you have given the general appearance of a public road, so that those who may be induced to make use of it by its appearance, may not be subjected to accident or inconvenience. It is ranked as a municipal road so that this obligation of the proprietor may be subject to the control of the municipal authorities. The municipal council can cause it to be closed at both ends, and so terminate its responsibility. This is in reality hardly, if at all, an extension of the liabilities of the common law. What is added is principally the power to the municipality to constrain the owner to desist from what is dangerous to the public. This seems to be admitted, but it is argued that by this they have no possessory right in the road, and that while leaving it open, it remains in some sense a municipal road, that the property remains vested in the owners who tolerate its use. This pretention is founded on the last part of Art. 749 M.C.: "But the property in the land and the obligation to maintain such roads continue in all cases vested in the owner or occupant."

I don't think the power to close the road, and so terminate the difficulty instantaneously, affects the question. It might be as well said that the municipality has another remedy, they might verbalize it as a public road. The fact is the law has declared that while things remain in a certain state the road shall be subject to municipal authority, and that the municipality shall be liable to the public as an owner. If this view be well founded, it does not seem to me to be of any moment whether you call this action possessory or not, within some very strict definition of a possessory action. It may be considered as a special action directing the appellants not to interfere with respondent's rights in the road, whether these rights be precarious or the reverse. Some of the conclusions are negatory, and it is on them respondent succeeded in the Court below. It is manifest that the appellants could have no greater right to destroy the road as a passage than the owners of the road, and it is perfectly clear that the owners could not tear up a municipal road of any sort while it was a municipal road. They might have closed it perhaps, and thus have destroyed its municipal character,—the appellants could not. It was manifestly a trespass on the rights of the corporation, if the road was municipal. The whole question then is as to the fact of whether it was a municipal road or not.

There is nothing in the resolutions of the council denying that it was. They called it a *chemin de tolérance*. It is not necessary that it should be fenced on both sides. Being *habitually* open at both ends, and being fenced in on both sides, determines that it is a municipal road; but this may be established by other signs if *habitually* open at *both* ends. Thus it might be indicated by ditches, by a finger-post, by *balises*, as is common in winter, or even, I fancy, by general appearance, and particularly by use. The presumptions arising from these indications gain consistency and become fortified by long existence. It is useless to go into minute criticism of the long *enquête* in this case.

The whole contestation leaves no room to doubt how the substantial facts stand. The land or passage, to use the terms of the code, was occupied as a road for nearly 80 years. So much was this the case that the appellants, without any reference to the proprietors, planked and themselves used it. It was not closed at either end. We have thus use by the appellants themselves on the assumption that they, as part of the public, had rights, and the most perfect indication by absence of gates at the end, and by the planked road-way, that it was a road for public use, and hence a municipal road.

I think therefore the appellants have no cause to complain of the judgment. It is