

converted it into the Place Jacques Cartier.

In January 1847 the act of conversion was made complete, and there was also a subsequent by-law by which they directed that the new place should be henceforward called the Place Jacques Cartier.

Their Lordships assume also, for the purposes of the case, that, upon the happening of these events, whatever rights if any the demandant or those he represents had under the condition in the grant of 1803 came into existence in January 1847, that is, that they were then entitled, if at all entitled, to put their claims in force and to institute a proceeding against the corporation to take advantage of the condition annexed to the gift of 1803, and to resume possession of this plot of ground or to get compensation for the act of the corporation. But they did not do so, and things went on as before from 1847 to 1852. The effect of the transaction of January 1847 was, to convert, by the act of the corporation, the old market place into a public square which the citizens of Montreal and the public had a right to use.

Things continued in that condition down to 1852, when Perrin instituted his action. That action may be described with substantial accuracy as similar to the present. It made the same case. The present demandant is the assignee of Perrin's interest. Perrin's action the corporation defended. They put in exceptions similar, save in one respect, to those now before their Lordships. It was allowed to sleep for some six years. The case was then set down for hearing before the proper court in Canada, and was dismissed, either for want of prosecution, or on the merits. Perrin never instituted any other proceeding. He appears to have lain dormant for 19 years, and in 1876, for a nominal sum, to have assigned this large claim over to the present demandant. In all that interval, the public had been using this public place and it was not using it privately, it was not *clam*, but it was openly and as of right, without any interruption by the parties or any of them who are now represented to have had the property in the place. Mr. Fullarton relied very much on this action of Perrin's and a petition that came in from some outside parties. Who they

were we do not know; but it was a petition which was not acted upon, and it is open to the suggestion that it was the existence of that petition that suggested the action of François Perrin. However, Perrin never took a step further, and it appears to their Lordships that the absence of any contestation of the right of the public to use this place as a public highway is clear evidence of acquiescence in the public right, or rather of abandonment of the claim, if any, that François Perrin had.

Their Lordships desire to point out that, independently of the statutes, there is evidence of a long-continued user by the public and an abandonment of right by those who could have disputed the user by the public, sufficient to sustain at common law the public right. There seems to be no difference between the law of Lower Canada and the law of England and of Scotland in that respect. The public had enjoyed the right from 1847 down to the commencement of the present action. They had enjoyed it openly, claimed it, not privately, but adversely, and as of right, and in the meantime, there had not been a single step on the part of the present claimant, or those from whom he derives title, to dispute that right, but, on the contrary, there was the amplest evidence of acquiescence in the public enjoyment. There has been made out, independently of any statutory provision, an ample case of user on the one side and dedication or abandonment on the other which would constitute the place in question a public place over which, not the citizens of Canada or Montreal alone, but the public at large, had rights, which the law would give effect to, independently of the provisions of any statute.

The 18 Vict. c. 100, Lower Canada, does not apply to Montreal, but deserves attention. Montreal is excepted from the operation of that Act, but it applies to every part of Lower Canada save Montreal and some other excepted places, and it contains this provision, that "every road declared a public highway by any procès verbal, by-law or order of any grand voyer, warden, commissioner or municipal council legally made and in force when this Act shall