

Public place—User by the public—Acquiescence or abandonment—23 Vict. ch. 72, s. 10.

HELD:—1. *Where an old market place had been converted by the city of Montreal into a public square, which the public had enjoyed without interruption from 1847 down to 1876, that there was, 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 square in question a public place, over which the public at large had rights to which the law would give effect.*

2. *That the square in question having been enjoyed by the public as a public way during more than ten years before registration under 23 Vict. ch. 72, and more than ten years after such registration, it became a public highway under the terms of that statute.*

The appeal was from a judgment of the Court of Queen's Bench, Montreal, Sept. 19, 1883, dismissing an action claiming the rescission of a deed of donation of a piece of land in the city of Montreal, known as Jacques Cartier Square. See 6 Legal News, 348, for report of the judgment appealed from.

PER CURIAM:—The action from which this appeal arises was commenced in the Superior Court of the province of Quebec, Lower Canada. The demandant, who is also the appellant, claimed to be proprietor of about seven-eighths of that part of the city of Montreal which from 1803 to January 1847 had been a public market, and from January 1847 to the present time has been an open public place in the city, known as the Place Jacques Cartier. The demandant claimed against the respondents, the city of Montreal, a right to resume possession of that piece of land as in the original ownership of the grantors. His money claim against the city amounted to 180,866 dollars. Further, he claimed that the original deed of grant of 29th December 1803 should be brought in and declared null and void. The claim is said to have arisen under that deed so often referred to in the course of the case.

It was said to have been a purely voluntary gift, but their Lordships think, if it were necessary to express an opinion on it, it might be doubtful whether it was voluntary,

and whether its true character was not a grant to the magistrates of the city of Montreal for valuable consideration.

The place in question was originally the property of the Seminary of Montreal, and the Seminary, being about to dispose of it, entered into a treaty with Périnault and Durocher. The property appears to have been made over to Périnault and Durocher to make the most they could of it, but under a condition that they were to pay to the Seminary a sum of about 3,000 guineas. They proceeded accordingly to divide it for building purposes; but reserved a portion, and they entered into treaty with the concessionaires, who stipulated that there should be not only the Rue de la Fabrique (which did not then exist as a street, but was *projetée* only,) and also that the open space lying between the Rue de la Fabrique and the Rue St. Charles should be converted into a public market. Périnault and Durocher, being unable to comply with that condition without the aid of some public body, applied to the magistrates at Montreal, as they could create a public market, and it was necessary to seek their aid, and out of this sprang the grant of the 29th December 1803.

The result of that deed seems to be, that it created a public right as well as a private servitude,—that is, when that deed had been carried out by converting the open space, which is now the subject in question, into a public market place, with a right in the public to resort to it as a public market place,—it became subject to that public right, at the same time, possibly, being subject to a private servitude to the parties who had become concessionaires of the building plots. Their Lordships do not find it necessary to express any opinion upon the general construction, or upon the effect of the condition contained in the grant of 1803. They assume, but for the purposes only of the judgment which is about to be delivered, that the demandant's contention may be right, that when there was a breach of that condition, the donors or their representatives would be entitled to re-enter and to resume possession as of their former estate.

Several questions of very considerable importance and difficulty have been raised