being claimed. The defendant by plea tenders the sum of $39.45 for the last five years' *rentes*, but says that the rest of the claim is prescribed. One question is: Are such *rentes* prescriptible by five years? Another is, whether in the present case the prescription acquired has not been renounced by acts and acknowledgments of the defendant? Upon the former point I am with the defendant. Our Consolidated Statutes, cap. 41, support the defendant, and so, I would say, does our old law. On the second point, the parties have been at enquête, and to prove renunciation to the prescription a witness has been examined, to whom questions have been put (under reserve of objections by defendant), the answers to which prove renunciation and promises by the defendant to pay, request for delay, &c. It is to be observed that this is parole proof to support a demand persisted in of far more than fifty dollars. The proof has been objected to as illegal, and upon the objections reserved I am with the defendant; the evidence going to prove a renunciation to prescription is declared of no effect. The demand in controversy being over fifty dollars, must control, and it cannot be admitted that the evidence referred to ought to make gain to plaintiff for a sum not exceeding fifty dollars, comprised in the larger sum of the demand. See Merlin, Rep., vo. "Preuve," also Danty, p. 416, edition of 1769.

Bethune, for plaintiffs.

Geoffrion, Rinfret, Archambault & Dorion, for defendant.

CORPORATION OF ST. MARTIN v. CANTIN.

Public Road, What is Necessary to show the Existence of.

A village corporation seeking to have a lane declared a public road, must establish by positive evidence the existence of the right alleged. It is not sufficient to show that inhabitants of the village passed by the lane in question,—more especially where the facts appear to indicate that the lane was opened originally for the private convenience of adjoining proprietors.

MACKAY, J. The plaintiffs sue to have a lane in the Village of St. Martin declared a public road under the plaintiffs' control, and to have defendant ordered to discontinue encroachments and barriers upon it, and condemned to pay $500 damages for having disturbed plaintiffs and the public in their rights to the lane. The declaration alleges immemorial use of that lane by the general public, and that the plaintiffs had notified defendant to discontinue his trespasses. The plea denies that the lane alluded to is a public read, and sets up that it is a piece of private property, which the defendant, whose land adjoins, has had right to use in common with all the proprietors whose lands adjoin. The lane in question is a *cul de sac* fifteen feet wide; entry to it is from the Main street of the village, and it runs till it strikes the lands of two men, Gauthier and Charette. It makes a sortie, extra, for these men's lands, which have other outlet, but the villagers who might be disposed to walk about upon the lane would have to confine themselves to it, for they would be trespassers, if going beyond, they were to pass over Gauthier's and Charette's lands. The history of the first opening of the lane is dark; the plaintiffs show no ancient plan, nor deeds, dedicating, even impliedly, this lane space to the public. The plaintiffs have never spent a cent upon the lane. Curasson says that *communes* often pretend claim to *chemins privés* as *chemins communaux*, sometimes under pretext that the inhabitants pass there daily. (P. 239, Edition of 1842. Actions Poss.) The facts articulated by the *communes*, he says, must be *bien appréciés*. The passage of the people may have been by leave and license, or tolerance. "Ces faits de passage seuls, quelque nombreux et multipliés qu'ils fussent, seraient équivoques." But, he adds, if "*actes de voirie*," "*réparations faites*," &c., &c., have been, also, and if there are old plans, giving these lanes or passages the name of road, there would be more to support the *communes*. Further on, he says, "Le passage des habitans *ut singuli* n'est pas à considérer, si surtout le chemin, bordant ou traversant des héritages particuliers, parait destiné à leur service, et qu'il existe à proximité de véritables chemins de communication."

Applying these principles and considering what is proved in the present case, I consider it impossible to maintain the plaintiffs' action. The plaintiffs had burden of proof, and have failed to prove their allegations. The lane in question, from all that I can see, is a mere *chemin d'exploitation* which we may presume the adjoining proprietors or some of their *auteurs*, probably the owners of a potashery that formerly