

"voulait la convertir à d'autres usages qu'une place de marché public."

That a market was established on the property. That in 1847 it was demolished, in virtue of a by-law of the Corporation, and the ground turned into a public street, and that it has ever since been so used, and that, therefore, he has a right to resume possession of the property so given.

This action was met by several pleas, which, after amendment, in effect stand thus :

1st. That the object of the donors, in making this stipulation, was to give value to property of theirs adjacent to this intended market. That the market, having been established, and while it was so established, appellant's *auteurs* sold, at a profit, their adjacent property, and are not *troubés* by the conversion of the market into a public road or square.

2nd. That the Corporation in converting it into a public square, acted in virtue of powers conferred by 8 Vic., c. 59, and that, therefore, appellant cannot complain, or, if he has any claim, it is for damages.

3rd. That respondent had been in possession for 73 years, and that the Corporation had a right to use the land as they thought fit, and they had used the ground for public purposes, it having become inadequate to serve as a market.

3. *Acquiescement* by appellant.

4. More than ten years have elapsed since it was made a street, and was as such duly enregistered in the corporation books.

5. Appellant's rights are litigious rights.

The learned judge in the court below held, that a portion of the property had from the first been a public street, that the clause was *comminatoire*, that appellant, having sold all his property, had no interest in exacting its fulfilment, and that it still could be fulfilled; and he therefore dismissed the action.

It appears to me that several of these pretensions may be dismissed without much difficulty. I particularly refer to the third and last proposition as grouped above. I cannot see that the Corporation, more than any other person, could prescribe against its title, and so if this was a reservation not prohibited by law, 73 years' possession could no more than one year give them rights beyond their title.

Again, as to what are litigious rights, there

may often be some difficulty under our law, for we have not adopted the simple rule of the Code Napoleon, Art. 1700. But in this case there can be no difficulty, for appellant is a coproprietor. (4 Toullier, No. 488.)

I cannot concur with the learned judge in the court below in considering that this clause, even if *comminatoire*, affects appellant's pretensions. The answer of the respondent is not "the Corporation is willing, in such delay as is mentioned, to re-establish the market," but that appellant has no right. Nor do I consider we can make up by conjectures from the testimony what were likely to be the motives of appellant's *auteurs*, unexpressed in the deed. It would be to prove *outré le contenu de l'acte*, and to wander into a perfectly imaginary field of speculation. To all intents and purposes, this deed is a pure donation, and we have nothing to do with whether the donors gave the land in the hope of gain, or of the glory which attaches, sometimes, to the memory of public benefactors.

On the other points, I am with respondent. It seems to me that the Corporation had generally the right to transfer a market from one place to another, and they certainly had a right at common law to open a street on their own property. By other statutes, they had a right to expropriate. There was no need to expropriate when they were in possession as owners. Under these circumstances, the donor saw a great public improvement going on and accomplished, and he remained perfectly silent for nearly thirty years. Then, almost as prescription was acquired, he turns on the Corporation, a public body, to stop up a great public thoroughfare and hand it back to him. The results of a proceeding of this kind should have warned the appellant that such a pretention is untenable in law, the rule of which is perfectly clear. We laid it down in the case of *Guy & The Corporation of Montreal*.<sup>\*</sup> If a person unmistakably abandons to the use of the public any real property, so that rights are acquired upon it by the public, he cannot resume its possession as against them. The Corporation of Montreal as a public corporation, that is, one on which certain governmental powers are conferred, represents this public right, and it cannot be compelled to do that which would only lead to individual contests with the public. The abandonment by the