RAMSAY, J. The pretension of the appellants in law is, 1st, that the Corporation can only acquire a street by possession of ten years and enregistration by the Council; 2ndly, that in that case they owe indemnity. As a matter of fact, they contend that there was no sufficient proof of possession of ten years apart from the production of a certain register, and that this is not the register required by the Statute, as it is not based upon, and it does not purport to be based upon, any resolution or decree of the Council, as it does not appear by whom it was written, and as the entry bears no date.

The Corporation, respondent, contends that there is full proof of the possession of ten years, and that the register is sufficient.

The case is rendered somewhat involved from the extraordinary form of the legislation to which our attention has been particularly directed. It is very difficult to put any reasonable interpretation on the 23rd Vict. It would seem that "*les rues, ruelles, allées, chemins et places publiques*" shall only become *chemins et terreins publics une fois enregistrés.* It seems, however, from the last two lines of the section, that the object in view was to enact that: "When the Council shall declare that any unregistered street, &c., is a public street, &c., or that any street, &c., has been used by the public as such for a period of ten years or upwards, such declaration shall be registered in a book to be kept by the City Inspector, and the entry in such book shall be *prima facie* evidence that such street, &c., is a public street, &c." If this be the true meaning of the Statute, it is clear that it is not the registration which alone gives the character to the place, nor even the declaration or *constatation* of the Council; the character depends on the antecedent fact that it was a public street, or that it had been in public use for ten years or upwards. But here a distinction has to be considered. The two categories are not similar. The declaration that a public street is a public street has no effect except to permit the registration so as to make a record of an already existing fact. But if there be no prescription of ten years for highways, or if there be no dedication to be presumed by ten years' use, then the registration or the declaration gives an effect to the antecedent fact which it had not independently. It is the declaration of the will of the Corporation, by its mouthpiece the Council, that it takes advantage of the decennial enjoyment of ten years. It would then be an expropriation, as Mr. Loranger has argued, and would give the party the right on general principles to indemnity. Perhaps under the action as drawn the question of indemnity might not come up, but the decree of the Council and the sufficiency of the registration would be important. It seems to me, therefore, to be all-important to decide whether there be a prescription of ten years by law, and what amounts to a destination or dedication of the property to public use by the owner. I may at once say that I do not think the City Charter gives a peremptory answer to the action, and that we must look further.

By the 18th Vict., cap. 100, sec. 41, ss. 9, a special statutory prescription of ten years was given to all roads left open and used by the public for ten years. That is to say, a right of way or servitude was established in favor of the public by ten years' enjoyment. But in the Act of 1860, which was an Act to consolidate the Act of the 18th Vict. and its amendments, the section giving this prescription was omitted, and it does not appear in any subsequent Act. There was, however, no clause repealing the section referred to. It may be a question whether the 18th Vict. was not impliedly repealed by the consolidating Act. But this does not appear to be applicable to roads in towns, and therefore we must hold that the only prescription that can accrue to the public in towns is that of 30 years. It may be a fair enough inference from the judgment in *Myrand & Légaré* (6 Q.L.R., p. 120) that we had decided that the 18th Vict. was still in force. I am not prepared to say that I feel bound by that dictum. There was a 60 years' possession, the road being perfectly cut off from the rest of the property, and I see by my notes, which are not printed in the report, that this was the view I expressed. It can hardly be seriously contended that there is evidence in the case before us of a prescription of 30 years. We have, therefore, only to enquire whether, as matter of fact, there was an abandonment of the continuation of the street by Mr. Guy, the father, and subsequently by the children, to the public.

It must be at once admitted that neither the plan made by old Mr. Guy, nor the *partage* made by the children, could by itself, or both