

nation made in 1803 of the property in the city of Montreal known as Jacques Cartier Square.

It appears that in the year 1803 the property now called Jacques Cartier Square, was a garden belonging to the Fabrique of Montreal. The Fabrique decided to sell it, and a committee was appointed to divide it and dispose of it in such manner as should appear most advantageous. Two of the members, Durocher and Perinault, became the purchasers for the sum of £3,500, but the same day they disposed of the property in lots at an advance of £800, to a number of persons who acquired their lots with the stipulation that the central portion should be reserved as a public market. The deeds carrying out this arrangement were completed on the 26th and 27th of the same month (December, 1803). The vendors, Durocher and Perinault, in order to conform to the condition that the central space should be a public market, made application to the justices of the peace then in charge of the city affairs, and by a deed of date 29th December, 1803, they ceded to the city the land in question to be used as a public market, stipulating that if the land were at any time applied to other uses the deed should be considered null and void. The square was thenceforward occupied as a market for more than forty years. A market house stood in the middle, with a street on each side, namely, Fabrique street on one side and St. Charles street on the other. Meantime changes took place in the city government. A city council succeeded to the charge which formerly devolved on magistrates, and in 1846 the old market place was abolished, a more spacious market being erected elsewhere, and the old site was turned into a public square. But in 1858 the concourse at the new Bonsecours Market was so great that Jacques Cartier square was again used as a market for grain.

The present proceeding was instituted in 1876 by the appellant, alleging that he represents the original proprietors, Durocher and Perinault, and complaining that the condition of their donation to the city, namely that the ground should be used as a public market, has not been complied with, and therefore the deed should be annulled, and the land should revert to the plaintiff.

Several grounds of defence were set up by the city. It was alleged that the object of Duro-

cher and Perinard was merely to discharge the obligation they had assumed towards the parties who bought their lots, and the latter had never complained of the change from a market to a square. The city had a possession of 73 years, and the plaintiff had never complained, and the present action was a purely speculative proceeding. It was also pleaded that the square had existed for more than ten years, and had been registered in the register of streets, and was now public property. Subsequently, the defendants filed an additional plea, alleging that Jacques Cartier Square had been converted into a grain market, so that the original condition was fulfilled.

The Superior Court dismissed the action, the grounds being in substance as follows: 1st. The condition as to cancellation of the donation in the event of the property being converted to other uses was held to be a penal clause. 2nd. It was proved that part of the land had been used since 1803 as a public street. 3rd. The persons from whom the plaintiff derived his rights had ceded all the adjoining properties more than fifty years ago; that they would not be troubled in respect thereof, and the plaintiff was without interest in bringing the suit. 4th. The land in question was now actually used for the purpose of a public market.

*Lacoste, Q.C.*, for the appellant, contended that the grounds upon which the judgment was based were untenable. These grounds are, first, that the clause in the original donation by which the land was to revert to the donors if applied to other purposes was comminatory; secondly, that the appellant was without interest to complain; and thirdly, that the donee was in time up to the rendering of the judgment, to re-establish the market, which had been done. In coming to the consideration of the case, it might be observed that the appellant was in the rights of the donors as heir as well as transferee. It was admitted by the city that the destination of the ground had been changed for a period less than 30 years before the suit. The pretension of the appellant was that the moment the respondent declared (as it did in 1847) that the land was to be turned to a different use, the city ceased to be proprietor, and the rights of the parties were the same as before the deed of 1803. This deed was drawn with great care; the object for which the land