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SUPREME COURT OF CANADA.

OTTAWA, May 1, 1894.

BAXTER V. PHILLIPS.

Quebec.]

*Rights of succession—Sale by co-heir—Sale by curator before partition—“Retrait successoral”—Art. 710 C. C.—Prescription.*

When a co-heir has assigned his share in a succession before partition, any other co-heir may claim such share upon reimbursing the purchaser thereof the price of such assignment, and such claim is imprescriptible so long as the partition has not taken place.—Art. 710 C. C.

A sale by a curator of the assets of an insolvent, even though authorized by a judge, which includes an undivided share of a succession of which there has been no partition, does not deprive the other co-heirs of their right to exercise by direct action against the purchaser thereof the *retrait successoral* of such undivided hereditary rights.

The heir exercising the *retrait successoral* is only bound to reimburse the price paid by the original purchaser, and is not bound in his action to tender the moneys paid by the purchaser.

Appeal dismissed with costs.

*Béique, Q.C.*, for the appellant.

*Driscoll and D. C. Bowie*, for the respondent.