

It would be impossible to presume that in a system of law based on equity like ours, there should be any express rule taking away the right to such an action as this. What the respondents ask is the exercise of their own right, and to say that they should ask to be paid by privilege is to contend that they should ask more than they are entitled to, at all events since the repeal of the insolvent act. Of course they might be disinterested, and their action be thus defeated.

The only question, then, is one of evidence. Is it proved that at the time of the payments referred to Chaput & Massé were insolvent? If so, did Boisseau & Frère know it?

As to the first question, there is no doubt that they were insolvent from the time of the inventory at the beginning of 1882. As to the knowledge of Boisseau & Frère it seems to be established in the only way in which it is usual to prove a guilty knowledge. It is proved by inductions or deductions of different degrees, and when sufficiently strong to remove all reasonable doubt it forms complete proof. Now here we have the relation of the parties,—the agreement that Boisseau & Frère should supply them, that Boisseau & Frère should have access to their books, that they took the means to exercise this power, that when events showed that Chaput & Massé were insolvent the supplies ceased and the payments increased solely to the discharge of Boisseau & Frère. There is not an attempt to answer this.

The judgment is, therefore, confirmed.

Judgment confirmed.

R. & L. Laflamme, for the Appellants.

Mercier, Beausoleil & Martineau for the Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, May 27, 1884.

Before DORION, C. J., RAMSAY, TESSIER, CROSS, BABY, JJ.

PINSONNAULT (plff. below), Appellant, and HEBERT et al. (defts. below), Respondents.

Action en réintégration—Proof of possession.

The appellant brought an action en réintégration in the court below, complaining that the respondents (defendants) had taken pos-

session of a certain immoveable belonging to him, and the appellant asked to be maintained in possession of the immoveable, and that the respondents be compelled to pay him \$400 damages.

The defence was to the effect that David Hebert's wife, with the heirs of her brother Joseph Girardin, owned a strip of the immoveable in question, 24 feet wide, and always had the use of it as a passage across the appellant's land.

The court below dismissed the action.

DORION, C. J. The action is *en réintégration*. This is an action which the party has when he has been dispossessed. But in this case in the first place the appellant has not been dispossessed, and in the next place the evidence is contradictory. The dispute is as to a piece of land which was formerly a road. There was a ferry there, and the road led to it. Upon the conflict of evidence we are not disposed to reverse.

RAMSAY, J. This is an action *de réintégration* brought by the owner of a lot of land on the bank of the river Richelieu, complaining of the invasion of his possession of another piece of land forming part of an old road leading from the front road to the river, and being the continuation of a road called the "Grande Ligne."

The two respondents severed unnecessarily in their defence, which amounts to this: that David Hebert's wife is the owner of this piece of road, and that the plaintiff is not only not the proprietor of it, but that his title excludes the bit of land in question, and that appellant had never any exclusive possession of the road.

The judgment of the court below seems to have turned on this, that neither of the parties had established a sufficient possession *animò domini*, and sent them to discuss the difference between them *au pétitoire*. The appellant feels aggrieved by this judgment and contends that in all cases the court must decide between two parties whose possession is the better. The authority cited by appellant does not say that; but "que deux possessions égales et de même nature ne peuvent concourir sur le même objet, l'une repoussant nécessairement l'autre, que la possession est exclusive," etc. This is obvious; but it is not