

upon default the defendant was to be entitled to resume possession and to forfeit all money paid; and the company agreed to operate the plant so as not to impair its value or that of the land connected therewith. The defendant alleged a breach of this last provision, and counterclaimed the value of timber cut down, machinery removed or destroyed, and damages arising from improper changes in the physical condition of the plant. The action was tried without a jury at Hamilton. Held, that the clause of the contract upon which the defendant based his counterclaim did not contemplate that each individual part of the plant was to be kept in precisely the same condition as it was at the time of the purchase, but that the company's obligation was so to operate the plant that its value as a whole should not be reduced. The plant, as a whole, when the defendant repossessed it, was of greater value than the plant he sold; but this did not entitle the liquidator to recover upon that head. The new machines formed part of the plant, and the defendant was entitled to take them, whether they were technically fixtures or not. Trees were cut down, but the timber from them was beneficially used upon the premises. With reference to the bricks manufactured and in course of manufacture, the defendant was guilty of conversion, and the conversion took place after date of the winding-up. The value of the bricks taken was \$6,000. It was said that 300,000 bricks had been sold to one Zimmerman. If the goods had been sold, there had been no separation from the bulk, and nothing done by which the property would pass; but the defendant should not be placed in peril of another action; and, unless the consent of Zimmerman and his pledgee (a bank) was filed, \$3,000, to represent these bricks, should be paid into Court, subject to further order. The plaintiff should also be allowed against the defendant \$300 for coal and oil taken. The defendant would be entitled to \$146.05, the amount of an account rendered; and \$300 for improper removal of fences; but these were liabilities of the company, and the defendant should have nothing more than a declaration of his right to rank in the liquidation in respect of these sums. The defendant was entitled to retain \$24,000 of mortgage debentures which he took as part of his purchase-price. If he desired, he might have a declaration of his right to rank *pari passu* with the other holders of debentures upon the assets covered by them, for this sum, with accrued interest. No set-off allowed of the sum to which the defendant was en-