gave the plaintiff a list of creditors whose names had to be obtained; but that notwithstanding his assent, both he and the other defendant interfered to prevent the requisite number of creditors from signing; and Darling himself, on the 25th of September (before the expiration of the 10 days granted to Styce), sold the stock and fixtures to Farley & Oliver, a firm in Toronto.

I must say at once that I have very grave doubts whether such a statement of action as this could be maintained under any circumstances. It is very true that Mr. Styce has now got his discharge, but at the time complained of, he was wholly divested by law of all his estate. He had nothing, and out of nothing nothing can come—not even damage, in the legal sense of loss or injury to property. He must be shown to have had a right that has been violated. What *right* had he, strictly speaking, to get back his estate for his own profit, and to the extent of his own profit—the loss of his creditors? He may have been prevented from receiving a gift, and he was, no doubt, disappointed in his hopes; but that is all; and that does not seem to me to give him a right of action. I do not say that this man, because he was then in the Bankrupt Court, could make no contract whatever; nor that the defendants could be permitted to ill-use him (if they have done so) with impunity. But I say that whatever their acts, they are charged with having caused damage in respect to property and to the rights of property of Styce in his insolvent estate, and that having no property at that time, he could have none of the incidents of property— no claim for the violation of the rights of property such as is made here. But even this gift, which it is said the defendants have prevented him from getting, could only have been his, in case he got the consent of his creditors, which he never got, either within, or after the ten days; on the contrary, it is shown that he never could have got it; and on the 22nd September he said it was all up, and Sumner even went with him to see an obstinate creditor—Mr. Munderloh, I think, who at once positively refused, and there was an end of it, and thereupon Farley & Oliver's offer was accepted. I see no evidence whatever of malice; as to Darling's letter to Nash, it was written after he had despatched his telegram to Toronto accepting Farley & Oliver's offer, and I think was very proper. I do not see either any evidence of Darling's assent to this project of the plaintiff; and, on the whole, I think that if such an action could be maintained at all, it could only be on clear proof of authority given in a formal and official way by the creditors; not in consequence of a mere benevolent permission, given individually; and certainly not complied with by the plaintiff. I think this man was perfectly honest, and naturally desirous of getting for himself what in law belonged to his creditors; but he failed to get it, and has no cause of complaint against this assignee or the other defendant. Their duty was plain, viz., to get as much as they could for the creditors; they seem to have had every desire to help the plaintiff as far as they could with advantage to themselves; and it was only after he himself said it was no use, that they sold the estate. The allegation that the inspectors before signing this permission or agreement, obtained a verbal promise from the plaintiff to pay ten cents, after the settlement for forty cents, is not proved. There is indeed the evidence of Mr. Stephens that Smith told him Styce had offered to pay ten cents more as soon as he could; but that is a very different thing. I must, therefore, dismiss this action; but when I come to the matter of costs, I ask myself whose fault is it that it ever was brought at all? and I cannot but see that the defendants, and the creditors who signed this permission, held out hopes to this poor man, and hopes, perhaps, not altogether disconnected with this possible ten cents extra which Smith acknowledges Styce had offered; therefore, I cannot altogether shut my eyes to the sort of thing that was being done. They brought all this on themselves; and I decline to give them costs against the plaintiff. Action dismissed without costs.

Kerr & Carter for plaintiff.

Monk & Butler for defendant.

DELVECCHIO v. LESAGE, and CLEROUX, mis en cause, and DESMARAIS, opposant.

Lease—Saisie gagerie par droit de suite—C.C. 1623.

JOHNSON, J. In this case there is an opposition by Demarais, claiming as his, and as exempt from seizure, under the *saisie gagerie par droit de suite*, a horse that has been seized as