

And he prayed that by the judgment of the Court he should be declared to have been, during all the time therein mentioned, and to be still duly seised and possessed of the land as proprietor thereof; and that he be maintained therein and the enjoyment thereof; and that the now plaintiff should be ordered, adjudged, and condemned not to trouble or disturb the now defendant in his possession in the future; and to pay the now defendant his damages, laid at \$10,000, with interest and costs of suit.

The now plaintiff appears, as defendant, to have demurred to the declaration, as I may call it, and to have stated specially his cause of demurrer, and also to have pleaded in fact to the declaration setting up title to the land.

The now defendant demurred to the plea, setting out the causes of demurrer, and upon these demurrers the Court dismissed the now plaintiff's *defense en droit* (demurrer) as unfounded in law, and maintained the *defenses en droit* (demurrers) to the now plaintiff's plea, with costs. And upon such pleadings the Court of Queen's Bench, to whom this matter was referred, has declared that such judgment has no effect on the now plaintiff's title, if he has a title.

Upon that finding, which we must adopt as our guide upon a matter specially and peculiarly within the knowledge and jurisdiction of the Court, the question of title is still open and controvertible between these parties.

By the fifth answer of the Court, which is the governing one, and is explanatory of the other answers they have given, they have declared the plaintiff could, by the law of the Province of Quebec, maintain an action for both the land and the ore, or for either of them, before the ore was removed from that Province. But the action for the ore would be one incident to the petitory action to vindicate the title to the land.

If the title were maintained, the plaintiff would recover the ore, *deductis impensis*, in accordance with articles 415, 416, 417, 418, and 419, of the Civil Code of Lower Canada.

And if an action were instituted to recover the ore before