

la plus value donnée à l'immeuble par ces améliorations. *Nugent & Mitchell* 15 Q. L. R., 140, Q. B. 1887.

142. Le demandeur, dans une action pétitoire, qui n'a pas été en possession du terrain réclamé, doit démontrer qu'il est propriétaire du ce terrain par des titres antérieurs à ceux du défendeur. *Archambault & Bourgeois* 10 R. L. 288 Q. B. 1890.

XXXVIII. POSSESSORY

143. Le défendeur pouvait légalement répondre à l'action possessoire du demandeur qu'il était propriétaire en vertu d'un titre de la terre, possédée par le demandeur, qui est en franc et commun socage dans un canton (township) de cette province, mais dans la cause actuelle, le défendeur n'a pas prouvé son droit de propriété. *Foley & Watts* 11 Q. L. R. 354, S. C. R. 1885.

144. Une compagnie incorporée, qui est en possession d'un immeuble, depuis au-delà d'un an, a l'action possessoire, contre un de ses actionnaires, qui la trouble dans sa possession. *La Cie. de la Pêche aux Marsouins & Gagnon*, 16 R. L. 200, Q. B. 1888.

145. Si une compagnie de chemin de fer s'empare d'un terrain, pour la construction de son chemin, sans avoir fait procéder à l'arbitrage ou avoir obtenu un bref de possession, et sans l'accomplissement des formalités requises par la section 8 du chapitre 100 des Statuts Révisés du Canada, elle pourra être poursuivie au possessoire par le propriétaire de ce terrain. *La Cie. du chemin de fer de Témiscouata v. Duke*, 16 R. L. 285, Q. B. 1888.

XXXIX. POUR FAIRE PRENDRE TITRE.

146. Dans notre droit, il existe une action, pour forcer l'usurpateur d'un terrain à prendre titre, si mieux il n'aime déguerpir ou en payer la valeur réelle. *Guay & Chretien*, 13 Q. L. R. 118, Q. B. 1887.

XL. PRIVILEGE OF

147. The Plaintiff sued, setting up that he was a creditor of the insolvent firm of H. H. & Co. and alleging that the Defendants had in their possession large sums arising from the sale of collateral security deposited with them for paper discounted for that firm before its insolvency, and which was not met at maturity; that the firm of H. H. & Co., had become insolvent and had assigned in trust all its rights and assets to one Stevenson, in which assignment the Plaintiff and Defendants had acquiesced, and Plaintiff prayed that an account might be rendered to him or the assignee, and the balance due H. H. & Co.'s estate paid in for the benefit of the creditors as the *gage commun*. The Defendants demurred to this declaration on the grounds that no privity of contract between Plaintiff and Defendants was alleged; that the only party entitled to

sue was the firm of H. H. & Co., or their legal representative, it not being alleged that Plaintiff was such; that the alleged insolvency and assignment did not prevent the firm of H. H. & Co., or the assignee bringing suit; nor did the assignment give Plaintiff any greater rights than he would have had otherwise; that there was no fraud alleged, and that therefore no grounds or rights of action on Plaintiff's behalf were disclosed. As the argument was submitted on behalf of the Defendants that the Plaintiff must either sue in his own right or as representing his debtors, H. H. & Co. As to his own rights he had none as against Defendants, between whom and himself there was no privity or *lien de droit*. The rights of H. H. & Co., he did not pretend to be subrogated in, and moreover he expressly alleged that they were all vested in the assignee. C. C. 1081 differs from the Code Napoléon, Article 1160, the last paragraph of which does not include the words, *lorsque à leur préjudice il refuse ou néglige de le faire*. The essentiality of allegations of the debtor's neglecting or refusing to exercise his rights to creditor's prejudice was a question even in France under the Code Napoléon as it stands; and no doubt can exist in Quebec, inasmuch as our Code expressly lays it down. If it were possible for Plaintiff to obtain the money or an account without pretending that he was exercising H. H. & Co.'s rights it could only be done by *saisie-arrest*. Authorities in support of these positions are found under Art. 1031 C. C. The Plaintiff's counsel in reply urged that he was exercising his own rights, privity being entirely unnecessary. Article 1081 of the Civil Code provides that the goods of a debtor are the common pledge of his creditors, and Plaintiff was exercising his rights in this respect. That Defendants had got into their possession property of the firm of H. H. & Co., in which Plaintiff was entitled to share as creditor, and that in their refusal to recognise his rights he was entitled to bring an action against them to compel them to do so. The demurrer dismissed. C. C. 1081, and 7 L. N. 274. *Boissacq & Thibaudan*, discussed and followed. *Thompson & Molsons Bank*, 8 L. N. 303. S. C. 1885, confirmed in Q. B. and Supreme Court 108. C. Rep. 661, 1889.

148. Le défendeur, en sa qualité de syndic à la faillite d'un nommé D., annonça en vente, par la voie des journaux, le fonds de magasin, les livres de crédits, etc., du failli. Le demandeur, se fiant sur l'annonce, se rendit à St. Alban, pour mettre une enchère sur la vente des crédits. Les crédits, ayant en grande partie été collectés avant le jour de la vente, ne furent pas mis aux enchères. Là-dessus, le demandeur poursuivit le défendeur pour recouvrer de lui le montant des dépenses qu'il avait faites pour se rendre à St. Alban. — *Jugé*, qu'il n'y avait pas lieu de droit entre les parties. *Dussault & Bédard*, 11 Q. L. R. 60, C. C. 1885.