for the appropriation of the same. This judgment was made executory against the respondent, by reason of the sale and conveyance of the property to him by the assignee of Payette. Farmer, the respondent, then called in Stewart to guarantee him as to the above sum. Stewart did not plead, and judgment went against him for the amount.

He now appealed, urging that under section 125 of the Insolvent Act of 1875, he was subject to the summary jurisdiction of the Insolvent Court, but that he could not be sued in his capacity of assignee in an ordinary action.

Sir A. A. DORION, C. J., said that the terms of section 125 were no doubt very broad: "Every assignee shall be subject to the summary jurisdiction of the Court or Judge in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and all remedies sought or demanded for enforcing any claim for a debt, &c., may be obtained by an order of the Judge on summary petition in vacation, &c., and not by any suit, attachment, opposition, seizure or other proceeding of any kind whatever." The appellant contended that in view of this section he could not be impleaded in any case whatever, and that the only remedy was to go before the Judge in insolvency, and petition against him. He cited the case of *Hutchins* v. *Cohen*, 15 L. C. J. 235, in which the late Judge Beaudry held that an assignee cannot be sued *en garantie* in respect of a matter for which the insolvent was liable to guarantee the plaintiffs *en garantie*. But there the action arose from a contract made by the insolvent himself before he had become insolvent, and not from an act of the assignee himself. In this case the liability was not a liability of the insolvent: it was not a claim that could be proved against his estate under section 80: it was not a debt of the insolvent existing at the time of the insolvency. It was impossible for the judge sitting in insolvency to entertain an action *en garantie*; he could not order the assignee to take up the *fait et cause*. Therefore, if the respondent could not sue the assignee before the ordinary tribunals he would have no remedy at all. The principle which must be applied was this: that where the judge sitting in insolvency is competent to give relief, then the ordinary tribunals will refuse to act; but when it is shown that the judge sitting in insolvency is not competent to give relief, then the ordinary remedy is allowed. In this case the Court was of opinion that there was no other remedy. The respondent was, therefore, entitled to call upon the assignee to guarantee him, and the judgment maintaining the action was correct, and must be confirmed.

Abbott, Tait, Wotherspoon & Abbott, for appellant.

Doutre & Doutre, for respondent.

MONTREAL, December 20, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

LA COMPAGNIE DU CHEMIN DE FER DES LAURENTIDES (plff. below), Appellant, and LA CORPORATION DE LA PAROISSE DE ST. LIN (deft. below), Respondent.

Alternative obligation to pay in bonds or money—Conclusions for money condemnation only—Demurrer.

The Company appellant instituted an action in the Court below for the recovery of $30,000, amount of subscription by the Company respondent in the capital stock of appellant.

It was alleged that under two by-laws made by the Corporation of St. Lin, the Mayor of the Parish was authorized to subscribe the sum of $30,000, and the Corporation of St. Lin reserved the right of paying the amount in money or in its debentures at par; that demand had been made on respondents to hand over debentures, but the request was refused; and conclusions were taken for a condemnation to pay the amount in money, without giving the alternative of paying in debentures.

To this action the Corporation of St. Lin demurred on several grounds, and the demurrer was maintained by the Superior Court, Torrance, J., particularly on the third and fourth grounds of demurrer, which were as follows:—

"3. Parce que les dites actions ne pouvaient être souscrites qu'en conformité aux dits règlements et avec le bénéfice de l'alternative d'en faire le paiement en argent ou en débentures au choix de la défenderesse.

"4. Parce que d'après même les allégations contenues en la déclaration ces actions étant payables, soit en argent, soit en débentures, prises au pair, au choix de la défenderesse,