

The plaintiff alleges that he had been illegally dispossessed of the property of which he had been in possession *animo domini* for upwards of a year and a day.

He alleges that the defendants illegally conspired together to oust him from his property, and that he had been greatly damaged thereby.

The defendants, Johnston and Fraser, plead a denial of the allegations of the plaintiff, and especially that plaintiff was not in possession as owner, but as a tenant of the defendant, Louis Duchesneau.

They further plead title in the defendant Fraser of the property in question. This plea is demurred to by the plaintiff on the ground that adverse title cannot be pleaded as a defence to a possessory action.

This demurrer or answer-in-law, was heard, and *preuve avant faire droit* ordered.

The demurrer is unfounded and must be dismissed.

The principle seems to be well settled that adverse title can be pleaded in respect of lands held in free and common soccage in the Eastern Townships.

I find that this principle has been held in our courts in several cases, some of which are unreported.

In a case from Arthabaska of *Hamel v. Jacques*, this point was decided by Mr. Justice Polette, and his judgment was confirmed by Judges Meredith, Taschereau and Stuart, in Review.

I have seen the record in that case, and the factum of the plaintiff Hamel, and a copy of the judgment.

It was a possessory action in respect of land of which Hamel had been in possession under a location ticket from the Crown.

During his absence in the States, the defendant Jacques recovered judgment against him, and brought this land to Sheriff's sale, buying it himself at a nominal price. Hamel returned and resumed possession and was afterwards forcibly dispossessed by the defendant Jacques. Hamel then brought a possessory action against Jacques who pleaded the Sheriff's title. This plea was demurred to and the demurrer was over-ruled on the ground that the land was situate in the Eastern Townships, and held under the free and common soccage tenure, and that title could be pleaded in respect of such lands. This judgment was confirmed in Review as before stated.

A similar judgment was rendered by the Court of Review at Quebec (Judges Casault, Andrews & Caron) in a case No. 113