

tion. The better to seize the bearing, on this question, of that important decision, it is well to recall the facts. Hainault, which had formerly been a portion of the Germanic Empire, came under the Dominion of France with a peculiar system of Laws, called the Constitution of Hainault. By that Constitution, no mine could be opened in Hainault without the express permission of the *Seigneur-haut-justicier*. For that permission, while the Feudal tenure lasted, the Seigneur had sometimes exacted an annual payment, called *entre-cens*. The French Revolution came; and in 1789, the Constituent Assembly decreed the abolition of the Feudal Tenure. The question discussed by MERLIN and his adversaries before the *Cour de Cassation*, was whether the rights possessed by the Seigniors in mines in Hainault before 1789, were rights of property, or merely feudal rights.

OWNERSHIP
OF MINES.
SEIGNIORIAL
ACT. COUR
DE CASSATION.
MERLIN.
DALLOZ.

And abolished, with
that tenure,
in France.

The *Cour de Cassation*, held with MERLIN, that those rights were purely feudal rights, and as such had been abolished by the Law of 1789. Those rights so declared abolished had been assigned to the Seigniors of Hainault by the Sovereign. For particulars of that decision, see the quotation from MERLIN, *Questions de Droit, vbo. Mines*, reproduced at P. 61 of this Factum; see also 31 DALLOZ, *Rép. de Légis. et de Juris. vbo. Mines*, §

The same.

Sec. 251.—What difference is there between the rights claimed under the “DE LÉRY PATENT” and the rights for which the seigniors of Hainault exacted an *entre-cens*? There cannot be two conflicting possessions of the same thing at the same moment of time! The *de Léry-Patentees* and the Plaintiffs cannot, at the same instant, possess, the one the soil, the other the mines, for both are so intimately blended that they form but one substance; the one cannot be taken away without destroying the other. A better illustration of the absurdity of the pretensions of the Defendants in this particular cannot be found elsewhere than in that sublime conception of Shakespeare, when Portia awards to her father the pound of flesh but adds that he may not draw the tiniest drop of blood.

Sec. 252.—The whole spirit of Our Law repels the supposition of a joint ownership even. Article 429, 430 and 431 of the Canadian Code, in treating of accession, prohi-

There can be
no joint
ownership.