

## The Legal News.

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The decision of the Judicial Committee of the Privy Council in *Porteous v. Reynar*, which will be found in the present issue, furnishes a striking illustration of the inconvenience which may arise from having two Supreme Courts of Appeal. It is now about three years since the profession in this Province were startled by the decision of the Supreme Court of Canada in *Burland v. Moffatt* (8 Leg. News, 147), reversing the law as stated by our provincial Court of Appeal (7 Leg. News, 182), and holding that persons in possession of trust property under a voluntary deed of assignment, by a debtor for the benefit of his creditors, are not entitled, as such assignees, to sue or be sued in reference to the estate and property assigned to them. It now appears that if that case had been appealed to England, the judgment of the Queen's Bench upon this point would have been affirmed; for the Judicial Committee, in *Porteous v. Reynar*, in the most emphatic terms express their dissent from the doctrine enunciated by the Supreme Court in *Burland v. Moffatt*. The decision of the Supreme Court being accepted by the Court of Queen's Bench as binding on them, was followed by the latter court in *Porteous v. Reynar*, contrary to their own view of the law previously expressed in *Burland v. Moffatt*. But the case of *Porteous v. Reynar* having been carried to the Privy Council, the Judicial Committee now render the judgment which the Court of Queen's Bench would have rendered, if the decision of the Supreme Court in *Burland v. Moffatt* had not stood in the way. The Judicial Committee, in *Porteous v. Reynar*, express the opinion that to accept the ruling of the Supreme Court in *Burland v. Moffatt* "would do considerable mischief, and practically defeat those compromises which constantly take place in carrying into operation the provisions of the Insolvent Act, and which can rarely be made effective without the introduction of trustees." This curious chapter in our jurisprudence will,

we fear, not tend to diminish the number of applications to the Privy Council for leave to appeal from the Supreme Court of Canada.

### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, November 15, 1887.

Before LORD FITZGERALD, LORD HOBHOUSE, SIR BARNES PEACOCK, SIR RICHARD COUCH.

JOHN PORTEOUS et al. (plaintiffs in first instance), Appellants: and JOSEPH REYNAR (defendant in first instance), Respondent.

*Assignment in trust for benefit of creditors—Right of assignee to sue in respect of the trust property—C. C. P. 19—“Burland v. Moffatt” (11 S. C. Can. Rep. 76), overruled.*

HELD:—1. (Overruling the decision of the Supreme Court of Canada in "*Burland v. Moffatt*," 11 S. C. Can. Rep. 76), that an assignee under a voluntary deed of assignment by a debtor for the benefit of his creditors can, as such assignee, sue and be sued in respect of the estate and property assigned to him.—Art. 19 C. C. P. is applicable to mere agents or mandataries who are authorized to act for others, and who have no estate or interest in the subject of the trusts; but is not applicable to trustees in whom the subject of the trust has been vested in property and in possession for the benefit of third parties, and who have duties to perform in the protection or realization of the trust estate.

2. That in the present case, the trustees having derived their title with the assent of all the creditors, from the official assignee appointed to an insolvent estate under the Insolvent Act of 1875, were assignees of his rights, and were entitled to enforce a contract entered into with them in respect of the trust property in their possession.

LORD FITZGERALD:—This appeal comes before their lordships *ex parte*. The plaintiffs below are the appellants, and are represented here by solicitor and counsel. The defendant, who obtained the decision of the Supreme Court of Canada in his favor, does not appear.