

With respect to corporate mortgages, covenants may be inserted in the Deeds, by which the Company mortgaging may validly bind itself, in the event of default, to surrender the property forthwith, and agree that default in payment of principal or interest, or other material covenant of the mortgage deed, may entitle the Trustee to take possession, apply for a receiver or liquidator, in which case the rights of the Trustee are equivalent to those enjoyed by the mortgagee elsewhere.

This distinction, it is important to observe. The words "mortgage" and "hypothec" are frequently used as convertible terms, and the latter as the English equivalent of the French word "Hypothec," but a clear and obvious distinction exists between them.

The following point should also be noted, i.e., Hypothecs can only be constituted in the Province of Quebec by means of a Notarial or authentic Deed. That is, the Deed must be passed before a Notary Public of the Province, under his seal, the original remaining of record with the Notary, who is authorized to issue authentic copies thereof. This formality is sacramental. (C. C. 2040). It is believed that, unless specially absolved from the necessity of so doing, by the local Legislature, these Deeds must be executed in the ordinary notarial form.

Further, mortgages must specially describe the immovable hypothecated by a designation of the conterminous lands, of the number or name under which it is known, or its name upon the plan and book of reference in the Registry Office, if such plan and book of reference exist. (C. C. 2042). The sum of money for which the hypothec is granted must be certain and determined by the deed, though hypothecs may be granted for any obligation whatever.

The foregoing observations, while unnecessary in the case of practitioners in the Province of Quebec, may be useful in cases where Trust Deeds are to be prepared or examined by solicitors and others not thoroughly familiar with the distinction between the "hypothec" and the "mortgage."

Subject to what has been said, the following hints are given to those who may be called upon to prepare such Trust Deeds.