

1875, date of the 1st May, being reckoned to years. *Ib.*

by a Defendant's disclosure, without the Court, and a hypothecal owner of the property.

stances, both joined jointly in the costs of both

ation hypo- thécaire per- séquemment, tion d'hypo- ur, réclamer tion person- été enregist- l'hypo- M. L. R. 4

ration d'hy- the posses- sionnaires was of the Appan- and interest ed to surren- it might be judgment, preferred to ant of the it was also ld be made rvice to be ent, and in in the said e condempn- amount of t, (the Res- and having rved at the he Respon- ay of forty ving been vrit of fieri at the Res- if the judg- d the pro- d handed mortgagee.

terris was longing to this its filed an- ming that served on personally Appellant.— t of the necessary to n d'hypo- sent from le therein, L. C. c. 12 L. N. 1880.

not op-

posing the first seizure of their property, had waived any irregularity (if any) as to the service of the judgment. *Ib.*

100. That in an action *en déclaration d'hypothèque* the Defendant, in default of his surrendering within the period fixed by the Court, may be personally condemned to pay the full amount of the Plaintiff's claim. Art. 2075 C. C. *Ib.*

101. L'action hypothécaire ne peut être intentée que contre le détenteur à titre de propriétaire, et non contre le locataire. *Globensky & Forget*, 18 R. L. 663, C. C. 1880.

### XXX. INTEREST IN

102. Lorsque rien ne fait voir au dossier qu'une corporation étrangère n'a pas le libre exercice de ses droits dans la province de Québec, cette corporation ne peut poursuivre devant nos tribunaux au nom d'un agent, ce dernier fut-il dûment nommé *receveur* de la dite corporation, et eût-il, d'après les lois de la province d'Ontario, le droit de recouvrer en sa qualité devant les Cours de justice, les créances dues à la corporation. *Giles & Jacques*, M. L. R. 1 S. C. 106, et 8 L. N. 100, et 29 L. C. J. 138, 1885.

103. On ne peut plaider au nom d'autrui (application de l'art. 19 du C. P. C.) *Giles & Giroux*, 13 R. L. 652, S. C. 1885.

104. Les cessions faites depuis l'abolition de la loi de faillite à un fidé-commissaire sont sans effet quant aux droits acquis par des tiers antérieurement aux dites cessions. *May & Fournier*, 20 L. C. J. 190, S. C. 1885.

105. Le cessionnaire, agissant *en-qualité* de syndic, dans l'intérêt de la masse, n'a pas, depuis l'abolition de la dite loi de faillite, de *status* personnel devant cette cour pour réclamer au nom des créanciers. *Ib.*

106. An assignment by an insolvent debtor of his estate for the benefit of his creditors, does not confer upon the assignee the right to pursue or defend in his own name the actions accruing with regard to the estate and property assigned. *Reynard & Porteous*, 11 Q. L. R. 207, Q. B. 1885.

107. In 1878 a firm of which K. was a member became insolvent, and made an assignment under the Act of 1875, to W. as Official Assignee, for the benefit of the creditors. By deed of composition and discharge duly passed, K. undertook to pay a composition to the creditors of the firm but was unable to carry out his undertaking. Subsequently the Official Assignee transferred certain timber limits, etc., to P. and others, K. consenting and releasing all his rights. By a further deed in which the creditors joined, it was provided that P. & al., should have actual and exclusive possession of all the real and personal property of the firm, with power to sell the same or any part, and to prosecute any actions necessary in the interest of the Estate, the proceeds of

which were to be divided among the creditors, it being also stated that the powers and authorities given to P. & al. were given with the intention that they should have the power of granting as good and valid a conveyance of any part of the estate as if every creditor signed the deed. P. & al. sold part of the property to R., who failed to pay the price, and on being sued pleaded that P. and al. had no right to bring an action in their own names to recover the price.—*Held*, reversing the decision of the Court of Queen's Bench, and reinstating that of the Superior Court, that P. & al., had the right to sue in their own names for the price of the property sold by them as above. *Ib.* 32 L. C. J. 55, P. C. 1887.

108. L'action prise au nom du créancier, mais aux frais d'un tiers qui doit en partager le produit, devant sa naissance à une convention illégale et prohibée, doit être renvoyée. *Dussault & La Compagnie du Chemin de Fer du Nord*, 11 Q. L. R. 165, S. C. R. 1885.

109. Lorsqu'il appert au dossier que le demandeur a cédé ses droits et n'est que le prête-nom du cessionnaire, le défendeur pourra sur motion faire suspendre tous les procédés jusqu'à ce que le cessionnaire, véritable demandeur, ait été mis en cause. *Bondy v. Valois et al*, M. L. R. 1 S. C. 236, et 8 L. N. 134.

110. The Appellant, who was trustee for certain creditors of a certain commercial firm of Robert Mitchell & Sons, sued the Respondent and alleged a transfer to him, by notarial deed dated 1st December, 1877, by John Ross Mitchell, of a sum of \$4,720.20 due by the Respondent as and for the price of certain immovable property in the City of Montreal, sold to him by the said John Ross Mitchell, by notarial deed dated the 5th January, 1877, and registered, and also a transfer to Appellant of certain promissory notes signed by the Respondent for the same amount, and representing the said price of sale, and which were to be in payment thereof only if paid at maturity. The Respondent was a party and intervened in the deed, and declared himself subject to the conditions therein contained. To this action the Respondent pleaded that Appellant had no action as trustee under Art. 19, C. C. P., and that the price had been paid by the two promissory notes which were now prescribed.—*Held*, affirming the judgment of the Court below, that Art. 19, C. C. P., is not applicable to trustees in whom property has been vested by a registered deed and to which deed the Defendant was a party. *Bur-land v. Moffatt*, 11 Can. S. C. R. 76, and *Brown v. Pinsonneault*, 3 Can. S. C. R. 102, distinguished; *Mitchell & Holland*, 16 S. C. R. 687 and 12 L. N. 348, P. C. 1889.

### XXXI. INCOMPATIBLE GROUNDS OF

111. A demand for damages or compensation for fruits, issues and profits, cannot be included in an action of bound-