du régistrateur alléguant, dans une note en marge, que la propriété y désignée est affectée au paiement de ce jugement, sans qu'il soit nécessaire de prouver l'enregistrement avec le jugement d'un avis contenant la description de la propriété hypothéquée. *Pacaud & Brisson*, 12 Q. L. R. 281 S. C. R. 1886.

93. On the 26th September, 1872, a sale of the immovable in question was made by A. M. to G. L. for $1,100, of which $300 were payable on the 25th December, 1873, the balance to be payable in yearly instalments of $100, with interest. On the 30th January, 1874, a sale of the same immovable, by G. L., the *personal* debtor of the debt bearing hypothec, to C. V., with the condition that C. V., the purchaser, should not have possession of the immovable until the 1st May, 1875, enregistered on the 2nd September, 1874. On the 9th November, 1875, a sale by C. V., to R. L., enregistered on the 20th November, 1875. On the 6th April, 1885, a sale by R. L., to J. F., *not enregistered*. On the 30th August, 1873, assignment of that hypothecary debt by A. M., to O. L., of the payment of $300 to become due on the 25th December, 1873, to which deed of assignment the personal debtor, G. L., was a party, accepting that transfer, enregistered on the 30th October, 1873. On the 12th January, 1855, the execution of the will of O. L., making his wife, the present Plaintiff, his universal legatee, and appointing her to be the executrix of his will, and his death, on the 3rd December, 1874. Five days before the issue of the writ of summons in this case, and twelve days before the service upon him, he, the Defendant, R. L., caused to be executed the *unenregistered* deed of sale already referred to. The Defendant, R. L., by perpetual exception pleaded that, at the time of the service of the action upon him, he had ceased to be proprietor of that immovable, producing, in support of that plea, a copy of his *unenregistered* deed of sale to F. On the 5th October, 1885, the Plaintiff in this case, by a hypothecary suit, brought the Defendant, J. F., into Court. F. pleaded, 1st, payment of the debt; 2nd, ten years' prescription as against the debt, *claiming* that the prescription ran from the date of the sale by G. L., to C. V., (30th January, 1874), *and not* from the date on which he entered into possession (1st May, 1875).—*Held*, Confirming the judgment of the Court below; That proof of payment of a hypothecary debt, based on an authentic deed, cannot be made by oral testimony, even though the witnesses may swear that they had receipts proving payment, but could not, after diligent search, find such receipts. *Vaillancourt* v. *Lessard*, 9 L. N. 267, S. C. R. 1886.

94. That the *actual* possession of ten years required to enable a purchaser in good faith to prescribe against a hypothecary debt, must be *exclusive* of the actual possession of the personal debtor; and that, in the present case, the interval between the 30th January, 1875, date of the purchase by C. V., and the 1st May, 1875, the date of C. V., obtaining possession from G. L., will not be reckoned to make up the period of ten years. *Ib.*

95. That, upon such a plea by a Defendant, and under the circumstances disclosed in this case, the Plaintiff may, without previous permission from the Court, engraft, upon the pending suit, a hypothecary demand against the actual owner of the hypothecated immovable. *Ib.*

96. That under the circumstances, both Defendants should be condemned jointly and severally to pay the costs of both suits in both Courts. *Ib.*

97. Le créancier d'une obligation hypothécaire qui poursuit son débiteur personnellement, ne peut subséquemment, dans une action en déclaration d'hypothèque contre un tiers débiteur, réclamer les frais qu'il a fait dans l'action personnelle, si ces frais n'ont pas été enregistrés contre l'immeuble portant l'hypothèque. *Sancer* v. *Thibeau*, M. L. R. 4 S. C. 473, 1888.

98. By a judgment *en déclaration d'hypothèque* certain property in the possession and ownership of Respondents was declared hypothecated in favor of the Appellant in the sum of $5,200, and interest and costs; they were condemned to surrender the same in order that it might be judicially sold to satisfy the judgment, unless they chose rather and preferred to pay to Appellant the amount of the judgment. By the judgment it was also decreed that the option should be made within forty days of the service to be made upon them of the judgment, and in default of their so doing within the said delay that the Respondents be condemned to pay to the Appellant the amount of the judgment. This judgment, (the Respondents residing in Scotland and having no domicile in Canada) was served at the Prothonotary's office and on the Respondents' attorneys. After the delay of forty days, no choice or option having been made, the Appellant caused a writ of *fieri facias de terris* to issue against the Respondents for the full amount of the judgment. The sheriff first seized the property hypothecated, sold it and handed over the proceeds to a prior mortgagee. Another writ of *fieri facias de terris* was then issued and other realty belonging to the Respondents was seized. To this second seizure the Respondents filed an opposition *afin d'annuler*, claiming that the judgment had not been served on them and that they were not personally liable for the debt due to Appellant.—*Held*, reversing the judgment of the Court below, that it is not necessary to serve a judgment *en déclaration d'hypothèque* on a Defendant who is absent from the Province and has no domicile therein. Art. 476 C. P. C. and Cons. Stats. L. C. ch. 49, sec. 15. *Dubuc* v. *Kidston*, 12 L. N. 178, et 16 S. C. Rep. 357, Su. Ct. 1889.

99. That the Respondents by not op-