

Boyd, C., Robertson, J.] *RENNIE v. QUEBEC BANK.* [Feb. 11

*Chose in action—Assignment of—Notice to debtor—Necessity for—R.S.O. 1887, c. 122, ss. 6-12—Ib. 1897, c. 51, s. 58 (5).*

Whatever may be the case in transactions coming under R.S.O. 1897, c. 51, s. 58 (5), in reference to the assignment of choses in action, under the prior law as found in R.S.O. 1887, c. 122, ss. 6-12, relating to the same subject, notice of the assignment to the debtor was not needed to vest a right of action in the assignee or in any way to perfect the transfer as between assignor and assignee, nor as between assignee and debtor, but only in order to protect the assignee against further assignments by the assignor or against any right of set-off, and to secure the debtor against possible claims by other persons. A chose in action is not bound by execution put in the sheriff's hands, but only by seizure thereunder.

The question whether an assignment of a chose in action to a bank is contrary to the provisions of the Bank Act cannot be discussed by a separate creditor not suing on behalf of all, but seeking preferential payment out of the securities assigned and held by the bank for a valid debt.

*Norris*, for plaintiff. *Aylesworth*, K.C., for Quebec Bank.

Boyd, C., Ferguson, J., Robertson, J.] [Feb. 19

*PEGG v. INDEPENDENT ORDER OF FORESTERS.*

*Mortgage—Creation of tenancy—Special clause—Covenant for quiet enjoyment—Repugnancy—Tenancy at will—Right to distrain—Assignment of equity of redemption—Assent of mortgagees—Liability of assignee for rent—Sale of distress—Absence of appraisement—Damages.*

A mortgage made by the plaintiff to the defendants secured \$36,000 and interest at five per cent., payable by instalments, this rate of interest to be paid both before and after maturity. It had the usual statutory covenants, and this special provision: "Provided that in default of the payment of the interest hereby secured the principal shall become payable. Provided that until default of payment the mortgagor shall have quiet possession of the said lands. Provided that so long as the mortgagor his heirs executors administrators or assigns shall remain in possession of the said lands then he or they shall hold the same by tenancy at will under the said mortgagees their successors or assigns at an annual rent equal to the said yearly interest and payable at the times set forth for the payment of the said interest any such rent collected to be applied towards satisfaction of said interest and that if the tenancy be determined at any time the rent accrued up to that period shall be payable forthwith for the purpose of enforcing remedies for the collection thereof." This formed one sentence in the mortgage, and had no stops throughout.