

in trust for creditors comes within the article "*Nul ne peut plaider par procureur*," and adopts the decision of Mr. Justice Badgley that the assignees of an insolvent cannot "*ester en justice*" for the creditors.

Their lordships cannot interfere authoritatively with either of those decisions, but they may express their opinion on them for future guidance; and their lordships have no hesitation in saying that the reasoning and the decisions of the Supreme Court in relation to the exception founded on Article 19 of the Code of Civil Procedure are not satisfactory, and that on the contrary they adopt the reasoning and decision of Dorion, C.J., in *Burland v. Moffatt*, as consistent with reason and law.

Their lordships having so disposed of the two decisions of the Supreme Court, which governed the Court of Queen's Bench, proceed to deal with the present case.

On this appeal they entertain not a shade of doubt that the decision of the Court of Queen's Bench was erroneous, and that the decision of the Superior Court was correct in fact and in law, and ought to be restored; and their lordships would have come to the same conclusion if the facts of this case were in effect similar to and had not gone beyond both *Brown v. Pinsonnault* and *Moffatt v. Burland*. Their lordships entertain the view that Article 19 is applicable to mere agents or mandataries who are authorized to act for another or 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. The case before their lordships is so different that even if the two preceding decisions were untouched they would not necessarily affect the decision of their lordships on the present appeal. This is not a case of a mere voluntary cession to a trustee for the benefit of creditors, but of an assignment under the Insolvent Acts to the official assignee for the purpose of realization. That officer could sue and must sue in his own name, though he has no beneficial interest. The present

plaintiffs derive their title from him with the assent of all the creditors, and they are the assignees of all his rights, so far as he could transfer those rights. In addition, by the composition arrangement entered into under the provisions of the 49th section of the Insolvent Act, and the subsequent acts springing from that composition, the estates moveable and immoveable have been vested in the plaintiffs in possession and in property under a mandate, to preserve, to manage, to realise, to pay off charges, and distribute the surplus. The trustees, too, are empowered to act independently of the creditors in performance of their obligations and duties, and are specially authorised to enter into contracts and to enforce them. The act of sale in the present case was regular and lawful. The plaintiffs as trustees, sold property to the defendant, of which they were lawfully possessed, and to which they had title. He received that title and that possession from them. They were to receive the purchase money, and he covenanted to pay the balance of that purchase money to them. The action is brought by the trustees on that covenant, and if they cannot enforce it in the present action there is some difficulty in defining what the remedy, if any, may be.

Their lordships are of opinion that to hold that the present suit could not be maintained, and in the present form, 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. They do not forget that in ordinary trust cases the estate is vested in the person of the trustee to accomplish the ends and purposes of the trust. In order to create an effectual trust the subject is usually vested in the trustee to preserve it, and deal with it for the objects contemplated, and whatever is essential to the purposes of the trust, if not expressed, is usually implied: thus, for instance, if trustees are to recover and distribute funds, they may institute and carry on actions, recover payment, and discharge the debtors.

Upon the whole their lordships are clearly