"James Gibb Ross, et Pierre Lafrance en "leur qualité de mandataires, mois non leur "propre et privé nom. Pourquoi le dit "défendeur conclut à ce que l'action des dits "demandeurs soit deboutée avec dépens "distraits aux sous-signés." The Superior Court of the Province of Quebec, in which this suit was instituted (Cour Supérieure, District des Trois Rivières), pronounced its decision on the 8th November, 1884, holding that the plaintiffs had proved their allegations and were entitled under the act of sale to recover from the defendant the balance of the purchase money. There is no allusion in that judgment to the 19th article of the Code of Civil Procedure, or to the exception now founded on it, and therefore it would seem not to have been brought under the notice of that tribunal.

From that decision an appeal was taken to the Court of Queen's Bench for the Province of Quebec; but there is nothing in the reasons of appeal to indicate that any question on the 19th article of the Code was to be raised. The 19th article is in these words:—"No person can use the name of another to "plead, except the Crown through its re-"cognised officers." That article is intended to express the rule of procedure previously existing in Lower Canada, and which, subject to numerous exceptions, represents in some respects the rule of procedure in this country, *e.g.* the Queen never sues in her royal name alone. Her suit is by her Attorney-General on her behalf, or by some other public officer who has authority by Act of Parliament to enforce the rights of the Crown. Again, by the law of England a mere agent who contracts as such cannot generally sue in his own name; but he may do so, and sometimes is the proper person to sue on contracts entered into with him directly in his own name. He may be personally held liable on such contracts, and generally with us, trustees of real or personal estate, who have in them the title and possession, though but in trust for others, can sue to enforce their rights as such, and are the proper parties to enforce the contracts entered into with them in respect of the trust property, and a trustee is not regarded in the light of a mere agent, "mandataire," or as a "Procureur qui a pouvoir d'agir par "un autre." But their lordships do not deem it necessary to pursue this further, as they have to give effect to Canadian, and not to English law.

This case came before the Canadian Court of Queen's Bench, Province of Quebec,* and that court reversed the decision of the Primary Court:—"Considering that the "Supreme Court has already decided in the "cases of *Brown et al.* v. *Pinsonnault*, and of "*Burland* v. *Moffatt*, that a voluntary assign-"ment by an insolvent debtor of his estate "and property for the benefit of his creditors "did not confer upon the assignees the right "to sue or defend in their own name the "actions accruing with regard to the estates "and property assigned. And, considering "that the present case does not constitute an "exception to the ruling of the Supreme "Court." Mr. Justice Ramsay concurred, but not in the reasons of the judgment; and after stating that the reversal by the Supreme Court of the decision of the Queen's Bench in *Burland* v. *Moffatt* was a calamitous mistake, and a double error, he adds:—"But the "deed in this case is of a totally different "character. It carefully avoids giving re-"spondents any title but that of trustees; and "this respondents perfectly understood. They "sold as trustees, and now they bring the "action as principals. I do not see how this "action could be maintained. If they are "principals they show no title; if they are "trustees they cannot sue as such; for no "one but the Crown can use the name of "another to sue. Art. 19, C.C.P." The reasons of Mr. Justice Ramsay, so far as they are reported, do not appear to their lordships to be satisfactory; but in truth the majority of the court seem to have merely followed the two prior decisions of the Supreme Court at Ottawa. Their attention does not appear to have been directed to the totally different circumstances of the present case.

Their lordships have now to consider these two decisions, of which the earliest was *Brown* v. *Pinsonnault*, reported in 3 Supreme Court of Canada Reports, p. 102, on appeal from the Court of Queen's Bench. There were two questions. The first was whether a particu-

* 11 Q. L. R. 297.