

compensables dues par la même personne, on suit pour la compensation les règles établies pour l'imputation des paiements.

Cod.—ff L. 1.—L. 5, § 1.—L. 102, § 1.—L. 3 et 94, § fin.—ff L. 4, 7, 97, 103, *cod. tit.*—Pothier, 638.—C. N. 1297.

C. N. 1297.—Texte semblable au nôtre.

Conc.—C. c., 1158 et s., 1159, 1161.

Doct. can.—5 Mignault, C. c., 640.

1196. La compensation n'a pas lieu au préjudice des droits acquis à un tiers.

Cod.—7 Toullier, 381, 394.—12 Duranton, 442, 443.—C. N. 1298.

C. N. 1298.—La compensation n'a pas lieu au préjudice des droits acquis à un tiers. Ainsi celui qui, étant débiteur, est devenu créancier depuis la saisie-arrêt faite par un tiers entre ses mains, ne peut, au préjudice du saisissant, opposer la compensation.

Conc.—C. c., 1147.

Doct. can.—5 Mignault, C. c., 652.

JURISPRUDENCE CANADIENNE.

1. A party acquiring a claim under the circumstances and for the purpose mentioned in sec. 91 of the Insolvent Act of 1869, cannot oppose said claim in compensation. The transfer of such debt is null and void as against the insolvent's estate. In the present case the compensation could not be acquired under C. c., 1188, 1196:—*Boaudry, J.*, 1874, *Riddell vs Reay*, 18 L. C. J., 130.

2. A quantity of timber was pledged for the payment of a draft, and it was agreed that if the draft were not paid, the holder was to sell the wood and place the proceeds to the owner's credit. The draft was not paid, the owner of the wood became insolvent and the pledgee sold the wood, of which he had never had actual delivery. It was held that the pledgee could not place the balance of the price of sale, after paying the draft, to the credit of a former indebtedness of the owner:—*Q. B.*, 1880, *Perkins & Ross*, 6 Q. L. R., 65; 10 R. L., 263; 20 R. L., 438.

3. A witness of one party may levy the

subject to compensation due by the same person, the compensation is governed by the rules provided for the imputation of payments.

DOCTRINE FRANÇAISE.

Pothier, n. 638 et s.—28 Demolombe, n. 653 et s.—4 Aubry et Rau, 237, § 328.—18 Laurent, n. 385.

V. les auteurs sous les arts 1158 et s., C. c.

1196. Compensation does not take place to the prejudice of rights acquired by third parties.

amount of his taxed expenses on the opposite party condemned to pay them, even after the final judgment has been rendered in favor of the latter, awarding him, against the former, costs to a much larger amount.

4. Compensation does not take place, in such a case, so as to bring it within the exception in art. 281, C. p. c., "that the amount allowed the witness has not already been paid to such party or his attorney in virtue of a duly receipted bill of costs":—*Andréus, J.*, 1895, *Brousseau vs Trotter, R. J. Q.*, 7 C. S., 111.

5. La tierce-saisie ne pouvait, pour les commissionnaires retirés par le défendeur depuis la signification de la saisie-arrêt, opposer ce que ce dernier lui devait, la compensation ne pouvant plus alors s'opérer au préjudice de la saisie-arrêt:—*Mathieu, J.*, 1890, *Gauthier vs Huot, R. J. Q.*, 16 C. S., 242.

6. Une convention par laquelle le tiers saisi, locataire du défendeur, prend ce dernier en pension et paie ainsi son loyer, n'est pas brisée par une saisie-arrêt, si aucune fraude entre les parties n'est prouvée:—*Trotter, J.*, 1890, *The Manufacturers' Life Insurance Co'y vs De Bellefeuille et al.*, 5 R. de J., 322.

DOCTRINE FRANÇAISE.

Larombière, sur l'art. 1298, n. 4.—3 Aubry et Rau, 411, § 284.—12 Duranton, n. 444.—Ménagé, sur l'art. 1298.—Larombière, sur l'art. 1298, n. 4.—4 Aubry et Rau, 232, § 326.—5 Demolombe, n. 635.—5 Colmet de Santenay, n. 250 bis 4.—18 Laurent, n. 442.

1197. Celui qui paie une dette qui est, de droit, éteinte par la compensation, ne peut plus, en exerçant la créance dont il n'a point opposé la com-

1197. He who pays a debt which is of right extinguished by compensation cannot afterwards in enforcing the debt which he has failed to set up