

“out of the trusts hereby reposed in them, as well as for the better conservation of the property hereby entrusted to them, and also for the execution of any incumbrances thereon; also to lease the said real estate or any part thereof until it can advantageously be sold; and also until the said timber limits can be sold, to allow timber to be cut thereon upon such terms as the said trustees may deem reasonable.” And by 19th, “That the said trustees shall and may, by all such lawful ways and means as they may think proper, collect and get in all sums of money belonging to the said estate; and dispose of, and convert into money all other the property and effects belonging to the said estate, the whole as to them in their discretion shall seem best; also to commence and prosecute any action or actions, suit or suits, as well real as personal, in any courts of law or equity for the recovery of any sum or sums of money, goods, chattels, or other property of any kind that now is or may hereafter become due or payable, or belonging to the said estate, or for any other purpose that the said trustees may consider necessary in the interest of the said estate to commence and prosecute, and the same action or actions, suit or suits, to prosecute and follow until final judgment.” And by 22nd, “That all moneys which shall be got in and received by the said trustees after the payment of all costs and charges of winding up the said estate, shall be applied in the first place to the payment of the advances heretofore obtained by the said trustees to enable them to meet the expenses incident to the discharge of their duties as such trustees, and more particularly to pay the sum of \$6,170.15 (with interest at 7 per cent.) advanced by the Bank of Montreal to pay the Crown Lands Department the transfer dues owing on said timber limits so belonging to the said estate, as appears by a certain deed bearing date the 30th day of June, 1877, executed before the undersigned notary, to which William Walker, of the said city of Quebec, in his capacity as assignee as aforesaid, was party of the first part, and the said Bank of Montreal was party of the

“second part, and the said Alfred Frederick Augustus Knight was party of the third part, and by a certain deed bearing date at Quebec aforesaid, on the 4th of July of the same year, passed before the same notary between the said parties.”

The estates being thus vested in the trustees, they proceeded to sell and make sale of a portion to the respondent, and by the conveyance dated 13th December, 1882, in which their position as vendors and their title to the lands is fully recited, they conveyed to the respondent, “for ever, with promise of warranty against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever, the lands so sold; of all of which the said purchaser declares to have a perfect knowledge, as having viewed and examined the said property and the titles thereto, and therewith is content and satisfied. Which said vendors are lawfully seized thereof under and by virtue of a certain deed of transfer consented to by the said William Walker, of the said city of Quebec, Esquire, official assignee, in his capacity as assignee duly appointed to the insolvent estate of Benson, Bennett & Co.” The deed then recites, “The present bargain and sale is thus made for and in consideration of the price or sum of \$11,014.64, on account of which the said vendors do hereby acknowledge to have received from the said purchaser, at the time of the execution thereof, the sum of \$3,671.54, *dont* *quittance d'avalant*. And as to the balance of the said purchase price, to wit, the sum \$7,343.10, the said purchaser doth hereby bind and oblige himself, his heirs, and assigns, to pay the same to the said vendors at the said city of Quebec,” by instalments as provided for in the deed. The action was instituted by the trustees' vendors to recover the residue of the purchase money, all the instalments being overdue. All the averments in the plaintiff's declaration have been sustained in evidence. The defence, whilst it puts the plaintiff on proof, amounts to what we would call a demurrer in law, and concludes thus:—“Qu'à tout événement la demande en cette cause devait être par les dits John Porteous,