

sary in the interest of the estate. All proceeds (Article 22) of the estate, after payment of the trustees' expenses, to be divided amongst the creditors. It was stated (Article 26) that the powers and authority given to the trustees were given with the intent that the trustees should have the power of granting as good and valid a conveyance of any part of the estate as if every creditor signed the deeds. In accordance with the provisions of the deed of the 16th May, 1882, the appellants took possession of the real property of the firm of Benson, Bennett & Co., and in December, 1882, by the act of sale, sold part thereof to the respondent. The title of the appellants, and their right to sell the property, as arising under the conveyance of William Walker, the official assignee, and dated 9th of June, 1880, and the deed of the 16th of May, 1882, was stated on the face of the act of sale. The respondent took possession of the land so sold to him, and cut down timber thereon.

The whole case of the respondent rests on the contention that the appellants were agents of the creditors, and as such were not entitled to bring an action for the price of the land sold to him, in their own names. It was not contested, but that by the insolvency of Benson & Co., and by force of the provisions of the Insolvency Act, their whole estate vested in the official assignee, and that if the sale to the respondent had been by the official assignee, that officer, and he alone, could have sued in his own name as such to enforce payment of the purchase money. Their lordships refer to sections 16, 39, 75 and 76 of the Canada Insolvent Statute. The three original trustees had been appointed by the creditors' inspectors, with the powers and duties expressed by section 49 of the same statute. The several deeds or agreements by which the trustees became trustees of the estate were all duly made under the insolvency and in accordance with the provisions of the Insolvent Statutes, and by the deed of the 9th June, 1880, to which the official assignee was a party, and made also in pursuance of the same statutes, the said official assignee did, "for the advantage of the creditors and of the estate," transfer and assign to the

trustees all the whole real estate of the insolvents to hold for the purposes of the deed, and it contains the following provision: "And for the effect of the present assignment the said William Walker, official assignee, did hereby put, substitute and subrogate the said John Porteous, James Gibb Ross, and François Vezina, in their capacities of trustees and inspectors as aforesaid, in the place and stead of him, the said William Walker, in his capacity aforesaid, and in all his rights, title, interest, and demand, privileges and hypothecs, in, to, upon, or respecting the premises. And the above named Alfred Frederick Augustus Knight doth, both individually and as having been such co-partner, ratify and confirm the same in all respects, and doth consent and agree that the said parties of the second part shall receive and dispose of all the real estate hereinabove mentioned for the purposes hereinbefore set forth, hereby relinquishing, in favor of the said parties of the second part, all and any rights of any kind that he the said Alfred Frederick Augustus Knight may or can have in, to, or upon the above mentioned real estate and premises."

By the deed of the 16th May, 1882, to which the creditors were parties, and by which Lafrance was appointed trustee in place of Vezina deceased, after reciting that the whole property had come into the possession of the trustees, the confirmation of prior deeds and an agreement to discharge Knight from his liabilities under the composition arrangement, by the 18th article of the deed, it is declared "that the trustees shall have actual and exclusive possession of the whole of the said estate, real and personal, and are authorized to sell and dispose of it in such wise and upon such terms and conditions, either by private sale or by auction, and either for ready money or on credit, as to them, in their own discretion, shall appear most advantageous to the said creditors, with power to the said trustees in their discretion to contract from time to time any loans that they, in their discretion, may deem necessary for the advantageous carrying