

In this particular case, which is one of considerable importance, though it does not present much difficulty, it was specially desirable that the respondent should have been represented by counsel to assist their lordships by his arguments, and to lay before them the reasons for the decision of the Supreme Court. Mr. Bompas, Q.C., for the appellants, has fully and candidly opened the case on both sides, and has laid before their lordships the authorities on which the Supreme Court acted. But though that is so, it is incumbent on their lordships, in a case heard *ex parte*, to examine it more minutely, and to give their reasons more at large than would otherwise be necessary or desirable. Two leading authorities, decisions of the same Supreme Court, on appeal, have been principally discussed, viz.: *Brown v. Pinsonmault* and *Moffatt v. Burland*, and as there was no appeal in either of those cases to this tribunal, the decisions are binding and conclusive in Canada. But nevertheless it became obvious, in the course of this hearing, that it would be necessary for their lordships to review these previous decisions as to one question affecting this appeal.

The facts of the present case are conveniently and accurately stated in the appellants' case. The action was brought by the appellants against the respondent on the 19th May, 1884, to recover \$4,281, being the price of certain land sold by the appellants to the respondent under an act of sale in December, 1882. The notarial act was made between the appellants and respondent, and the respondent's contract to pay the price was with the appellants in their own names. The defence of the respondent, while not disputing the title of the appellants to the lands in question, or their right to sell, or the respondent's liability to pay for them, denied the right of the appellants to bring an action for the recovery of the price in their own names.

In 1876, the firm of Benson, Bennett & Co., in which Alfred Frederick Augustus Knight was a partner, became insolvent, and made an assignment under the Insolvent Act of 1875 to William Walker, as official assignee, for the benefit of their creditors.

By a deed of composition and discharge, made under the provisions of the same Act on the 16th of June, 1876, and a deed supplementary thereto made on the 19th of June, 1877, Knight undertook to pay a composition to the creditors of Benson, Bennett & Co., on condition that all the assets of the firm were transferred to him, with the exception of the real property and the timber limits, which were to be transferred by the official assignee, in whose possession they were by law, to the appellants, Ross and Porteous, and one Francis Vezina (since deceased), as trustees appointed by all the parties concerned, to hold the said real estate and timber limits for the benefit of the creditors and of Knight, until Knight had paid all the instalments of the composition, when the real estate and the timber limits would be conveyed to him by the said trustees. Knight was unable to pay the composition, and thereupon, on the 24th of January, 1879, by an agreement made by the creditors of the firm of Benson, Bennett & Co., and Knight, it was agreed that Knight should transfer all the assets of Benson, Bennett & Co. in his hands, and all his interest in the real property of the firm to the appellants, Porteous and Ross, and the said Vezina, for the creditors. By a deed made on the 9th of June, 1880, the official assignee transferred to the appellants, Porteous and Ross, and the said Vezina, the said real property and timber limits, and all his rights therein, Knight consenting and releasing all his rights. On the 16th May, 1882, by a deed between the creditors of Benson, Bennett & Co. and the appellants, Porteous and Ross, and Pierre Lafrance, after reciting that Vezina died on the 25th January, 1882, and it was desirable that a formal deed should be executed to carry out the provisions of the agreement of the 24th January, 1879, it was provided that the appellant, Pierre Lafrance, should be appointed in the place of Vezina; and that after the execution of the deed the appellants should have actual and exclusive possession of all the real and personal property of Benson, Bennett & Co., with power (Article 18) to sell the same or any part thereof, and (Article 19) to prosecute any actions neces-