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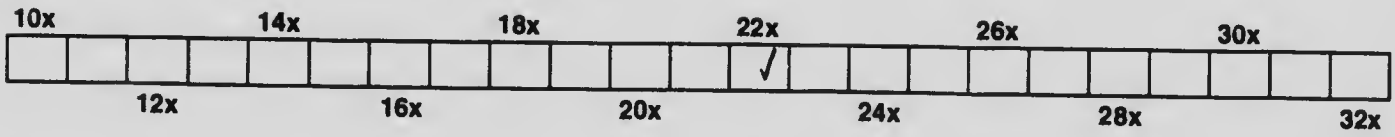

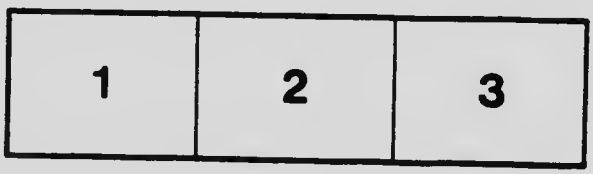

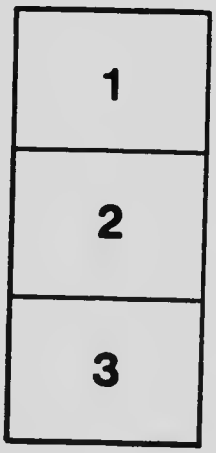

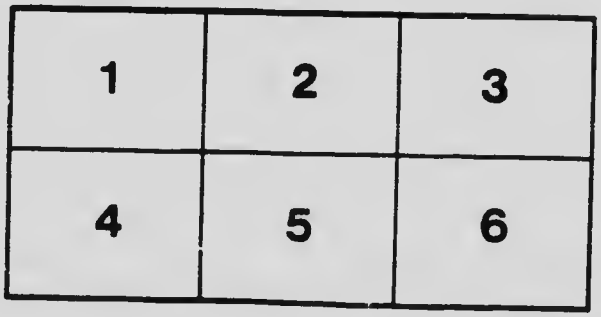

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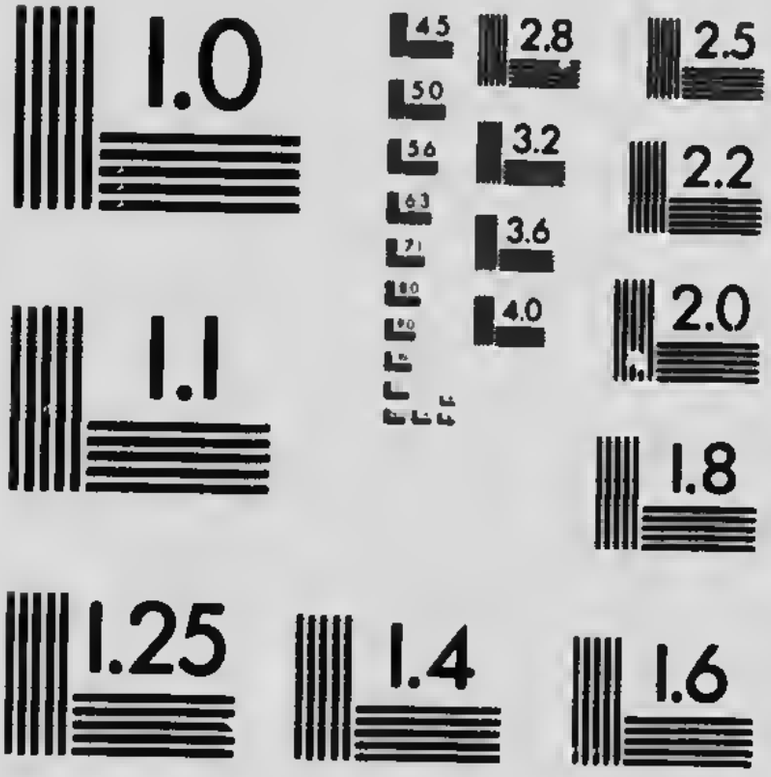

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Real Estate Securities

IN THE PROVINCE OF QUEBEC

BY . . .

ELLERS DAVIDSON, M. A.

ADVOCATE.

Read before the Insurance Institute of Montreal,
28th February, 1901.

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REAL ESTATE SECURITIES

In the Province of Quebec

BY

PEERS DAVIDSON, M. A.

ADVOCATE, MONTREAL.

(Read before the Insurance Institute of Montreal, 28th February, 1901.

Please do not imagine that the paper which I am about to read, will so enlighten you on this subject, as to make you, forthwith, quite independent of legal advice. That would be the last result which I would seek to attain—my brethren of the bar might cause me to regret it!

On the contrary, on the principle that a little learning is a dangerous thing, I believe that you will more than ever have recourse to the assistance of your solicitors, and, with Christian self-denial, place full responsibility on their shoulders!

The following outline may however prove of theoretical interest to you. It may even, at times, be of practical service in enabling you to instruct your legal advisers as to what course they should pursue or what opinion they should give you!

Many of you may not be aware that property and civil rights in this Province are governed entirely by the principles of the ancient customary law of France, as crystallized in our Civil Code. The Quebec Act of 1774, passed at a time of great unrest in the American colonies and in Canada, granted to French Canada its language, religion and laws, thereby in large measure preserving it to the British Crown. Statutary enactments since that date have introduced modifications and innovations on many subjects, but our system of land securities remains unaffected thereby.

The retention of this system by the British Crown in 1774 was not justified by the policy of self preservation and justice alone; for to have uprooted the system of land tenure and real rights then in force in this country for over a century and to have forced an English system upon an alien population at that time, would have caused dire confusion, if not rebellion. To add to the difficulty, the feudal system, as exemplified by the seigniorial tenure, then flourished and in fact continued to do so until 1854.

Canadians of English extraction are inclined, I think largely from unfamiliarity, to sometimes cavil at our French laws. I think unjustly so, for they are unsurpassed in English law by either equity, reason or philosophy and are, in fact, more directly derived from that great fountain of law, the Corpus Juris Civile of Justinian.

Our system gives ample and absolute security to the investor and enables us to ascertain the status of titles with almost mathematical accuracy. All are pratically held in fee simple; there is little or no leasehold.

The phrase "real estate security" signifies to the English lay mind "a mortgage". It signifies to the professional mind in the Province of Quebec, "a hypothec". These terms are usually used as synonymous. They are not so. I however so use them for convenience sake.

ORIGIN AND NATURE OF HYPOTHEC.

A hypothec, from the Greek *upo* signifying "under" and *tithemi* "I place", literally, "I place under", had, originally, several different forms in Roman law. By one, both the property and possession were transferred to the creditor, subject to the right of the debtor to reclaim it on payment of the debt. By another, the debtor retained the ownership but granted the possession to the creditor, subject to the same right in the debtor to retake it on payment of the debt, and subject also to the right of the creditor to take and sell the property if the debt was not paid at the expiry of the term.

It was found, however, that social interest required the establishment of a method of guarantee or security, which, without depriving the debtor of his property or of even its possession, would give to the creditor a real right in the thing. This method of security was finally evolved under the Roman law, received many modifications under the old French law and is now embodied in our Code, with such farther modifications as our codifiers deemed locally advisable.

The "hypothec" of our Code may be defined as a real right upon immoveables made liable for the fulfilment of an oblig-

tion, either for the payment of money, the doing or not doing of something or of any other legal obligation. In virtue of this right, the creditor may cause the immoveables in question to be sold and then have a preference upon the proceeds of the sale in order of rank, as fixed by the Code. You will note that the mortgagor retains both the ownership and the possession. He may continue to enjoy it or may alienate it, but only subject, in all cases, to the hypothec created upon it.

Hypothecs subsist in entirety upon all and every portion of the immoveables made liable and upon all improvements and additions in the way of buildings, which are subsequently made to them; but if the property passes to a third party and you have to sue him to realize your loan, he is entitled to be paid what he or previous holders, not personally bound, have expended on the property in improving it. The debtor cannot demand that a certain portion of the property hypothecated be released on payment of the value of that portion unless there is a specific agreement to that effect, i.e. that the hypothec shall charge the property in the proportion of so much per foot. Otherwise the whole remains bound until the complete discharge of the debt with its interest and accessories.

Care must be taken, however, not to allow the interest to fall into arrears, as your hypothec will not carry with it a privilege for more than two years arrears and the interest of the current year. If, by a remote chance, such an accumulation occurred, it could only be protected by a registration last in rank to all other claims already registered.

KINDS OF HYPOTHEC.

There are, broadly speaking, three kinds of hypothec the Legal, the Judicial and the Conventional.

Legal hypothec is that which results from the law alone, as for instance, that created to secure the wife's rights against the husband's property, that in favor of minors and interdicts against tutors and curators, and that in favor of the Crown. These legal hypothecs are always denoted by documents registered against the title and can always be definitely ascertained.

Another instance of legal hypothec of greater interest to you is that in favor of Mutual Fire Insurance Companies. This is created by law upon the immoveables of the insured mentioned in the policy, to secure the payment of the assessments upon the deposit notes. It is not subject to registration like others and ranks immediately after the municipal taxes and rates. It therefore is somewhat difficult to ascertain, but as this form of insurance is not frequent, and is rarely met with in cities, the danger of this mortgage existing is remote.

Judicial hypothec results from the judgment of any Court in this Province ordering the payment of money, or from any other judicial act. These must be registered and take rank in the order of their registration.

Conventional hypothec results from an agreement. This is the form which your security takes. It is with this class alone that this paper deals.

WHO CAN HYPOTHECATE ?

As hypothec creates such a real right over the property as may ultimately result in its loss and alienation, the law naturally gives the right to those only, who by law are capable of alienating it.

Your borrower, therefore, must in the first place be the owner of the property in some form. In this connection, it is interesting for you to know that everyone who pretends to hypothecate, mortgage or otherwise charge any real property to which he knows he has no legal or equitable title, is guilty of a crime for which the punishment is a year's imprisonment and a fine not exceeding one hundred dollars, the burden of proof of the ownership of the real estate resting on him.

Even when your borrower is unquestionably the owner, care must be exercised; for if he be a minor or interdicted for drunkenness or insanity or for other reasons, his property can only be hypothecated by his tutor or curator with the authorization of the Court, given on the advice of a family council.

If your borrower, on the other hand, be a married woman, she can only hypothecate her property with the consent of her husband or, wanting it, with judicial authority. But it must be remarked that the wife cannot mortgage her property for his benefit, even with his authorization. Such a security would be quite worthless, even though the deed were silent on the point, if it could be subsequently proved that the husband, and not the wife, really received the amount of the loan. This would not, I think, apply to a case in which the wife receives the money and subsequently applies it to the payment of her husband's debts. The lender would be discharged from risk on this head by the payment to the wife. The lender would not need to look further than the payment to the wife and her acknowledgement.

Persons who are notoriously insolvents and traders within thirty days of their insolvency are likewise incapable of granting valid hypothecs upon their property. This incapacity is created in favor of the mass of the then existing creditors, who would of course be prejudiced by the preference this would

give to one of them. It would add nothing to the strength of the security if the lender was ignorant of the borrower's insolvency. (Stephenson vs Lallemand, M. L. R. 6 S. C. 305). But it has been held that a hypothec granted by the borrower, when insolvent, to replace another ample security held by the lender and accepted by the latter in good faith to assist the borrower, will be upheld (Lefebvre vs Lamontagne R. J. 3 C. S. 158).

If there be a defect in the title of the borrower, as ascertained only subsequently to the making of the loan, which defect he subsequently rectifies, the hypothec takes effect from the date of its registration, saving of course the rights which third parties have acquired against the property in the interim. If, therefore, you find a flaw in your borrower's title subsequently to the hypothec, have it made right at once and your security will be good from the date of registration, with the above reserve.

If the borrower be a corporation, it would be wise to ascertain its power to hypothecate and that the necessary formalities required by its by-laws have been complied with.

The chief exception to the rule that the owner alone can hypothecate is made in the case of Fabriques; and, as Fabrique loans are more or less availed of by the insurance companies in this Province, a word as to their nature will not prove amiss. They are made in virtue of special provisions of the law.

The Province is divided into parishes by the Roman Catholic Church, for religious purposes. Each parish is a public corporation, governed by another corporation within it, formed of a committee or council, consisting of the Curé and the Church Wardens and styled the "Fabrique". The property, which this Committee or Fabrique administers and which it is specially given power to alienate and hypothecate, usually consists of the church, the presbytery, the schools and the cemetery. But, to enable it to grant a valid hypothec, all Canonical Regulations must be obeyed as to what they are must be ascertained from the church itself, the consent of the bishop must be given, and the authority of the parishioners themselves be obtained at a meeting duly called for the purpose. The latter authority is, however, dispensed with in large city parishes like Montreal. An exact compliance with all the remainder of these conditions would have to be secured.

It must not be understood that the whole parish can be thus hypothecated. It is only that property above mentioned which the Fabrique itself governs. Indeed, notwithstanding the express permission of the law, some authors dispute its power to hypothecate or alienate such sacred things as a church or cemetery, claiming that they are sacred in their

nature and cannot be sold. In reality, however, the sole difficulty would be in regard to the cemetery. There is a concurrence of opinion that before the sale the hypothecary creditor would have to cause the removal of all the bodies, according to the provisions of the law in that behalf. We can imagine the delight of some one of the managers present, with a good sized and well stocked grave yard on his hands, endeavouring to pacify a host of indignant relatives and friends, in an endeavour to realize his loan by unburdening it of its sacred contents.

It is advisable to restrict your loans to Fabriques to those in which the money is to be used for the construction of a church, sacristy, personage house or public hall. In such cases, if unable to repay the loan from its revenues, the Fabrique, with the authority of the parishioners, may apply to the Parish Commissioners, i. e. the commissioners who erect parishes, to authorize the Church Wardens to levy the necessary sums on the Roman Catholic freeholders of the parish. With this provision of the law, the creditor's security in reality becomes all the real estate of the parish, which is owned by Roman Catholics.

This consent or authority, it is true, may be refused and then the creditor's trouble might begin. Such a contingency is, however, remote. Fabrique loans are considered excellent securities.

FORM OF HYPOTHEC.

What is the form in which the Conventional Hypothec must be made ?

The Province may be broadly divided, from a racial point of view, into that portion which was settled originally by the English, commonly known as the "Eastern Townships", and that portion originally settled by the French The law makes a distinction between these two districts as respects the form in which the hypothec must be made.

In the counties of Missisquoi, Shefford, Stanstead, Sherbrooke, Drummond and Gaspé, and upon lands elsewhere held under the English tenure of free and common soccage, hypothecs may be constituted by private writings, duly executed before witnesses.

Upon lands throughout the remainder of the Province which constitutes the greater portion, the hypothec must be in authentic notarial form.

In either case, these documents are prepared by either your solicitor or your notary You have no responsibility in regard to them, and it is unnecessary, with the limited time at my disposal, for me to go into details as to their contents. Suffice it is to say, that the sum for which the hypothec is granted must

be certain and determined by the deed and the property hypothecated must be fully described by its boundaries and by its official number.

ORDER OF RANK.

Having learnt, therefore, the nature of your hypothec, who can enter into it and its form, the question which next confronts you is —How is it preserved, and how does it rank with other claims and hypothecs upon the property ? I imagine, however, that the securities which you take are without exception first mortgages, which to some extent lessens your interest in this respect. Even under such circumstances, however, there may be prior claims.

"Registration" is the proceeding which gives effect to hypothecs and other real rights, and establishes their order of priority.

The Province is divided, for the purpose of the land tenure, into sixty-nine registration divisions, each consisting of a county or part of a county and each containing a registry office. The registrar is an official of the government, who is liable in treble damages for any act of fraud which he commits or permits. Any mortgagor of land or his agent or solicitor, who is served with a written demand of an abstract of title by or on behalf of the mortgagee, before the completion of the mortgage, who conceals any deed material to the title or falsifies any pedigree upon which the title depends, with intent to defraud, is liable to a fine or to two years imprisonment or both. And he who withholds or conceals from the registrar any material document or even information or gives false information or who joins in any attempt to deceive him, is liable to three years imprisonment without option of a fine.

In each office is deposited an official plan of the whole division, which is divided into lots each bearing an official number. The plan is accompanied by a book of reference, containing a general description of each lot, the name of its owner, etc., the whole being commonly known by the French term "Cadastre"—a register of lands. In this manner, identification of even the smallest parcel of property is easily obtained.

Every registrar is bound to keep :

1. An alphabetical index of all documents registered as acquiring or conveying real rights ;
2. An index to the immoveables in the division ;
3. An entry book of all documents brought for registration ;
4. A register in which the same are described in full ;
5. A register of the legal hypothecs of the wife, the tutor, etc., and of judicial hypothecs ;

6 (most important on the present occasion) A register of the addresses or elections of domicile of hypothecary creditors.

It is the duty of every hypothecary creditor, in his own interest, to send his address or that of his agent to the registrar of the division, in order that it may be inserted in this register. This is usually attended to by your notary or solicitor. The registrar is then bound by law to send immediate notice of the time and place when the property hypothecated to him will be sold, to each hypothecary creditor interested. He, in addition, furnishes the sheriff with a list of the hypothecary creditors, in order that their rights may be observed in the distribution of the proceeds. You will readily see what an absolutely certain method the law provides of giving hypothecary creditors every opportunity to protect their interests.

Every right affecting the property in question, with a few exceptions which I will mention later, must be registered against the property by means of the books above mentioned. The registrar can at any time show you a list of these entries, and can at any time place before you an authentic copy of every document affecting the property in question. It is this system which gives such security to titles in this Province. It would be a wise precaution for you to make certain that registration is in fact made - in a word you should audit the registrations of the loans of your office.

The general rule of priority among hypothecs is that they take effect from the moment of their registration against creditors whose rights have been registered subsequently or not at all. In other words, they take effect in the order of date of registration. If it should, by a remote chance, happen that a number of hypothecs be not registered, they rank, as between themselves, in the order of their dates.

Care should be taken to neither expressly nor tacitly consent to a hypothecation in favor of another, of the immoveables hypothecated in your own favor; for he, who does so, is held to have ceded to the new hypothecary creditor his own preference. In such case an inversion of order takes place between you and the new creditor to the extent of your respective claims, but in such a manner as not of course to prejudice intermediate creditors, if there be any.

So much for the order of hypothecs among themselves

PRIVILEGES.

But the law gives certain claims, on account of their nature, a privilege or priority over all hypothecs. As these must be satisfied before the first and following hypothecs can rank upon the proceeds of the sale of the property in their turn; and, as

some of them need not even be registered it is well for you to know what they are and what their order of preference is, in order that you may guard against them as far as possible. They are and rank as follows:

1. Law costs and the expenses incurred for the common interests of the creditors. These would include costs of judgment, sheriff's costs and sheriff's commission. This claim is of course exempt from registration, inasmuch as the amount of the costs is not ascertainable until the last.

2. The funeral expenses of the owner when his movables have proved insufficient.

3. The expenses of the last illness of the owner, with the same restriction.

These two claims, however, must be registered against the property within six months of the decease of the owner, in order to retain their privilege.

4. The expenses of tilling and sowing on the property before the harvest is gathered, and then to the extent only of the value given by the tilling and sowing. This claim is also exempt from registration. As probably but few of you lend on country property, you may rarely meet with it.

The four privileged claims which precede cannot, well be guarded against or prevented. They are insignificant with the exception of the sheriff's commission of 3½, which can be controlled by buying in at a nominal figure, if the property is not bid up to cover you, by others. It can often be arranged.

The sheriff's commission is fixed by Government it is really a tax.

5. Assessments and rates. These are (1) Assessments for the making of Churches, etc. (2) School rates (3) Municipal Rates for five years of arrears.

This privilege is not subject to registration. This fact causes no inconvenience as respects School and Municipal taxes, in as much as they are known by all to be permanent. The lender can quite easily ascertain whether they are paid before and secure their payment during the continuance of the loan It is usually stipulated that the mortgagor's default in this respect during the loan, renders the whole due, *ipso facto*

On the other hand, however, Church Assessments are incidentals, almost always unknown to strangers; and they frequently charge the property with a considerable sum. They are levied only by the Roman Catholic Church, and only upon property owned at the time by Roman Catholics.

When a Protestant sells to a Roman Catholic and takes a hypothec upon the property for the balance of the price his hypothec as unpaid vendor will take precedence of a church assessment created during the possession of the Roman Catho-

lic purchaser; but the hypothecs created by him, while owner, will not do so.

When a Roman Catholic sells to a Protestant, the church assessment, created before that date, continues to charge the property and takes priority over any hypothecs which the Protestant purchaser may create.

Unless convinced that the owners of the property to be hypothecated have been Protestants for many years past, special enquiries should always be made by your solicitors at the office of the Fabrique; and special search made in its books to make certain that no such privileged claim already exists against the property. To that extent you can protect yourself.

6. The privilege, which comes sixth in order, *upon real estate*, is the claim of Mutual Fire Insurance Companies for the amount which the insured are liable to contribute, as already seen. This claim, as we have pointed out, need not be registered; and it is difficult to see how one can ascertain whether any such exists, beyond by enquiry from the Companies of that nature which may be doing business in that district. As a matter of practice it is rarely, if ever, met with in respect to city properties.

7. Seignorial dues. These are now practically obsolete. They are insignificant if they still exist on any property. The documents in the title would fully indicate them.

8. The claim of the builder. The laborer, the workman, the architect and the builder, each has a right of preference, in that order, over a vendor and all other creditors, on the building which they have assisted in constructing, *but only upon the additional value given to the immoveable by the work done.*

If you make a loan upon a building in course of construction, you should either take a waiver of all these claims or reasonable precautions that they are or will be paid as the work progresses. Otherwise, they will take precedence of your mortgage, even without registration, so long as the work continues, and will take like precedence, if registered, within thirty days of its completion. The law requires certain notices to be given by these claimants to the proprietor, but none to the hypothecary creditor, so that the latter must be well on his guard.

9. The claim of the vendor. The vendor has a privileged claim upon the immoveables sold for all the price due to him, the donor for the payments and charges stipulated in his favor, and the co-partitioner, co-heir and co-legatee for the warranty of the partitions made between them and of the differences to be paid.

The deed constituting any of these claims, however, must be registered within thirty days of its date, in order to preserve the privilege. If your borrower has acquired his title within that time, your adviser would of course insist upon its production before the loan was made, in order to ascertain what provisional claims had been created under this section.

10. The last privilege is that of servants' wages and those of employees of railway companies employed for manual labor, when the moveables have proved insufficient. This is a privilege of no great importance.

Such then are the claims which can take precedence of your hypothec. I have endeavoured to point out how you can, as a rule, protect yourselves in regard to them.

RIGHTS OF PARTIES DURING THE EXISTENCE OF THE HYPOTHEC.

As already pointed out, the hypothec does not deprive the debtor of the property. He continues to enjoy it and may alienate it, subject, however, to the privilege of the hypothecary charge upon it. But neither the debtor nor other holder can, with a view of defrauding or of deteriorating the immoveable, carry away or sell the whole or any part of the buildings, fences or timber on it. If he does so, he is liable to five years imprisonment. You may also sue him for the amount of the damage, even though the claim be not yet payable ; and, if your judgment, when obtained remains unsatisfied, you may arrest the offender for debt and keep him in prison until he satisfies it or until he makes an abandonment of his estate. The amount so recovered, of course, goes in reduction of your claim.

When your loan becomes due, either by the expiry of its term or by the failure of the debtor to perform any of his obligations under the deed, you have two recourses, according to circumstances.

If your debtor is still in possession of the property, you may sue him for the debt and accessories ; and, having obtained judgment, seize and bring the property to sale as for any commercial debt. Your claim ranks on the proceeds in its order. You have the right to attend the sale and bid in competition with the public. If your security has been well chosen, the public will either bid it up to an amount sufficient to cover your loan and the privileges before it or you will be able to buy it in at a nominal figure and hold it for future sale at a profit on your loan and expenses. If you purchase the law permits you to retain the purchase price to the amount of your claim until the distribution, provided you furnish the sheriff with a bond You have to pay the costs, however, within three days.

The sheriff's sale discharges the property from all real rights not mentioned in the conditions of sale, except:

1. Servitudes, for example, a right of way.

2. Arrears of seigneurial dues usually insignificant.

3. And, only where there is no prior claim, rights of emphytensis, (that is a lease of more than 9 and less than 99 years); the customary dower of the wife prior to the husband's death and a substitution which has not yet opened, that is, has not passed to the second degree. These should be searched or when the title is examined prior to the loan.

If, however, the property has passed into the hands of a third party, you have what is known as the hypothecary action against the property. The new owner is made a party to the suit and the judgment orders him to surrender it within fifteen days, in order that it may be sold by the sheriff on pain of a personal condemnation for the debt. If he prefers, he may pay the debt and accessories and retain the property. Under any circumstances, the new owner may be condemned personally to pay the rents and profits which he has received since the service of the action and any damages he may have caused to the immoveable since that time. He also has the five following defences:—

1. To demand that you first sell the personal property of your debtor, provided the defendant indicates it to you and advances the money necessary to bring it to sale.

2. When you are in any way personally bound to warrant his title, to ask the dismissal of your action. This rarely occurs.

3. To ask that he be substituted in all your claims against those personally liable.

4. To demand that he be paid what he or previous holders, except the personal debtor, have expended on the property in improvements.

5. If he has received the property in payment of a claim, prior to the one sued on, as any of you might do, he can, before surrender, obtain from the plaintiff, security that the immoveable will bring a sufficient price to ensure the payment of his privileged or prior claim.

You have the same rights of purchase and bidding under this proceeding as under the former.

If another hypothecary creditor takes proceedings against the property and brings it to sale, your hypothec, even though its term be unexpired, at once *ipso facto* falls due and ranks on the proceeds in its turn.

If the owner of the property is unknown or uncertain and the capital or two years arrears of interest is due to you, speci-

all proceedings are provided whereby the property may be brought to sale in the ordinary course.

EXTINCTION OF PRIVILEGES AND HYPOTHECS.

Of course we are all aware that your hypothec will become extinct upon the payment of the debt and of its accessories. You will then have no further interest in it. You are then prepared to forego your security; but it is well to know that your hypothec may become extinct and your security may disappear for a variety of causes, even while your loan may yet remain unpaid. The following is, I think, a complete enumeration of the various circumstances under which such an event can happen. You will notice that while they are all possible, many of them are exceedingly remote possibilities.

In the first place, if the property hypothecated is entirely lost, the hypothec disappears. The only suppositious cases, it seems to me, are when the land and buildings disappear in a landslide, as occurred in this Province some years ago or when they are encroached upon and permanently destroyed by water. The mere destruction by fire of the buildings upon the property would not cancel the hypothec, although it would reduce the security. The hypothec would still remain upon the land. Loss by fire is of course, as you are all aware, protected by insurance payable to the mortgagee and most fire companies include a mortgage clause in their policies setting forth the rights of the mortgagee. Many interesting and difficult questions arise in this connection. I could not attempt to deal with them satisfactorily in this paper and they might be reserved for consideration at a future date.

Your hypothec may also become extinct by the property subject to it ceasing to be an object of commerce. This might happen in an ordinary mortgage where the property became a cemetery or served for the erection of a church. An exception to the rule, of course, would be where these properties had been hypothecated, as such, by the Fabrique itself.

If the hypothec has been granted by one having merely a life interest or a temporary interest in the property, it naturally lapses upon the termination of his life or his interest. It is not likely that any of you would lend to a holder by such a precarious title.

Of course, if you as hypothecary creditor become purchaser of the property, confusion results between your two qualities, and the hypothec is thereby cancelled.

Hypothec can be cancelled by an express renunciation on your part, which of course would only be in the case of a special arrangement. Care must however be taken that you give

no tacit renunciation of the hypothec by your action. For instance, if a portion of the property was destroyed by fire and you collected the insurance made payable to yourself as mortgagee and then handed it to the owner to be devoted by him to restoring the property, your hypothecary claim would be considered to be reduced by the amount that you received; and for the money so received and paid, you could only rank subsequently to all other hypothecary creditors, then registered. Your acceptance of insurance moneys under such circumstance would operate as a tacit remission of your hypothec to that extent. So long as any portion of your loan or its accessories or costs remained unpaid, your original security would continue over the whole amount of the property to secure the sum still due. A solution of the difficulty would be to allow the money to remain in the hands of the insurance company and give the contractor or the owner a guarantee that you will liberate it on completion of work to the extent of its amount.

In this connection, this point is to be noticed. If your loan is due and at the same time your company becomes the debtor of your borrower under a policy for a fire loss, the two claims become compensated one with the other to the extent to which they concur. You would of course avail yourself of this set off and would not pay to the insured the amount due him, but would apply it upon his indebtedness to you. Should you pay him the loss by an oversight, however, your hypothec would become discharged to the extent of the payment you made him.

Of course a sheriff's sale or other sale of like effect, or expropriation for public purposes cancels your hypothec, but you retain your recourse upon the price of the property just as if you had yourself brought it to sale. The law requires the Registrar or the Prothonotary to notify you of any such disposal of it. It will always be your duty to be represented at the sale to make certain that the property is not sold for less than the amount of your claim.

Again, the hypothec may be discharged by the owner by a proceeding called "confirmation of title" under which an owner can obtain a clear title by giving notice of his application to the Court in the Official Gazette and in the French and English newspapers in the locality.

He can only obtain discharge, however, upon paying the amount for which the property is charged.

I do not presume that in well regulated offices it is possible that a loan should be allowed to remain overdue for a term of ten years, but should this happen, an acquirer of the property in good faith, prescribes the ownership, and liberates himself

from all the hypothecs on the expiry of that term, by an undisturbed possession in virtue of such title during that term. In such case however, each new holder may be obliged to furnish a renewal title at his own cost. This prescription of course, is notice favor of the personal debtor, who remains personally bound and from whom the debt may still be recovered for a term of thirty years. It is well, therefore, for borrowers to require subsequent purchasers to assure personal for the debt. This as a matter of fact, is usually done.

A curious case connected with this branch of the subject has lately arisen in regard to Hutcheson Street, Montreal. When it and the properties fronting on it were still farm land, a hypothec was created on the whole but limited to so much per foot to enable the owner to free any portion he might sell, by paying the proportion of the loan with which it was, in particular charged. A subsequent owner of the property marked off Hutcheson street dedicated it to the public and sold lots on its line as fronting upon it, in each case discharging the mortgage as provided. The roadway was made, sidewalks laid and drains put in by the municipality. Houses were constructed fronting on it, from end to end. When a subsequent purchaser of the balance of the mortgage came to realize upon it, he found that the only security he had left, was what was apparently a public street. In the ensuing litigation, the question for the Court was whether the owner of the land hypothecated could validly dedicate a portion of it to public purposes and thereby cancel the hypothec upon it. Reason and equity answer in the negative, but judges had so far differed on various phases of the litigation and there is yet no final judgment of a Court of last resort. It is awaited with some interest.

OTHER FORMS OF REAL ESTATE SECURITY.

To give the lender greater security, particularly in cases where in return for a high rate of interest paid, he takes some risk as to the value of the property or as to the character of the borrower, notaries and others have devised other forms and made use of other contracts, some of them are untried. Others are so onerous upon the borrower that if the security offered be good, he will not submit to them. One or two of these follow.

HYPOTHEC WITH SUSPENDED PLEDGE. Hypothec does not give the lender the right to the possession of the immoveable; so that pending the suit for the recovery of the debt, the borrower receives the rents and is not, perhaps, paying the interest. If, however, the property be hypothecated and *pled-*

ged, in addition, to secure the loan, with a stipulation that the pledge will only be exercised in case of defanlt in paying principal or interest, the lender may in such event take possession of the immoveable and recover the rents and apply them in payment to the extent of the debt. On the expiry of the term, however, he cannot retain possession, but must bring suit and sue, as on hypothec.

PLEDGE. This gives the lender actual possession. The lender receives the rent and applies it in payment of the interest and principal. There is no reason why the property should not be leased by the lender to the borrower at an annual rent to cover interest, insurance, taxes and annual charges of all kinds. In this case also suit must be brought to realize the loan.

SALE WITH RIGHT OF REDEMPTION The ownership itself may be transferred to the lender as security, under a sale with right of redemption within a certain time. If this term elapses, without repayment by the borrower, the lender becomes *ipso facto*, the owner of the property. Few borrowers will submit to this.

In a paper of this character it is somewhat difficult to so abbreviate the principles of the law as to properly condense so large a subject within comparatively so small a space. I fear I have given you an imperfect idea of many points.

I fear too, that matter so weighty, into which neither wit, humor, pathos nor action can be infused, may prove a source of mental indigestion to some of my friends present. A panacea for all such ills is :—"Always consult your legal adviser."