MARY FLORENCE DAVIDSON (PLAINTIFF) ..... } APPELLANT;

AND

WARREN ASA DAVIDSON (DEFENDANT) ..... } RESPONDENT.

1945 *Oct. 5

1946 *Jan. 24

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Real Property—Judgments—Unregistered transfer of land in British Columbia by registered owner—Recovery and registration of judgments against registered owner subsequent to the transfer—Whether judgments attached to the land—Land Registry Act, R.S.B.C. 1936, c. 140; Execution Act, R.S.B.C. 1936, c. 91.

The registered owner of land in British Columbia executed and delivered a transfer of it. The transfer was not registered nor was an application made to register it. Subsequently to the transfer, judgments were recovered against said registered owner, which were registered.

*PRESENT: Rinfret C.J. and Kerwin, Taschereau, Kellock and Estey JJ.

(1) [1938] 3 D.L.R. 712. (2) [1916] 1 A.C. 529.

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It was *held* (affirming decision of the Court of Appeal for British Columbia, [1945] 2 W.W.R. 576) that the judgments did not form a lien or charge against the land.

Provisions of the *Land Registry Act*, R.S.B.C. 1936, c. 140, and of the *Execution Act*, R.S.B.C., c. 91, discussed, and cases reviewed. Said statutes have not changed the common law rule that the execution creditor can only attach that interest which exists in the execution debtor; and, the registered owner having disposed of his entire interest at a time prior to the judgments, there was no interest upon which the judgments could attach.

APPEAL by the plaintiff from the judgment of the Court of Appeal for British Columbia (1) setting aside the order of Wilson J. in so far as it directed the sale of certain lands, in question in the present appeal.

The defendant was the registered owner of the said lands. In June, 1935, he executed and delivered a transfer of the said lands to Minto Trading & Development Company Ltd. This transfer was not registered, nor was an application made to register it.

The plaintiff recovered two judgments against the defendant, one in January, 1939, which was registered in July, 1943, and one in March, 1944, which was registered in March, 1944.

Wilson J., confirming the report of the District Registrar at Vancouver (made on an order of reference applied for by the plaintiff), ordered that the said lands be sold for the purpose of satisfying the said judgments. An appeal by the defendant was allowed by the Court of Appeal for British Columbia, which set aside the order of Wilson J. in so far as it directed the sale of the lands now in question. Special leave to appeal to the Supreme Court of Canada was granted to the plaintiff by the Court of Appeal for British Columbia.

The said Minto Trading & Development Company Ltd. consented to an order that it be joined as a party (respondent) on the appeal to the Supreme Court of Canada.

H. R. Bray K.C. for the appellant.

Alfred Bull K.C. for the respondent.

(1) [1945] 2 W.W.R. 576.

The judgment of the Chief Justice and Kerwin, Taschereau and Estey JJ. was delivered by

ESTEY J.—The appellant holds against the respondent two judgments registered respectively on the 23rd day of July, 1943, and the 30th day of March, 1944, in the Kamloops Land Registration District in the Province of British Columbia.

The respondent has been, at all times material to these proceedings, the registered owner of the lands in question under a Certificate of Indefeasible Title dated the 9th day of November, 1936, and issued out of the Kamloops Land Registration District.

The District Registrar at Vancouver has, after hearing the interested parties, certified

> that the interest of the said judgment debtor liable to be sold under and to satisfy the said judgment consists of the entire fee, being the entire right, title and interest registered in the name of the judgment debtor under the said Certificates of Indefeasible Title and standing in his name upon the records of the said Land Registry Office * * *

He then specified the lands in question.

This certificate was confirmed by the Honourable Mr. Justice Wilson, whose decision was reversed in the Court of Appeal. A further appeal is now taken to this Court.

The respondent's contention is that prior to the registration of the judgments he had executed and delivered a transfer of these lands to the Minto Trading and Development Company Limited in payment of 20,000 shares of stock allotted to him by that company. This instrument of transfer was executed and delivered on June 10th, 1935, and as a consequence he contends that since that time he has had no beneficial interest in the said lands. The company has never applied for registration of this transfer, nor does it now indicate any intention with respect thereto.

At common law "an execution creditor can only sell the property of his debtor subject to all such charges, liens and equities as the same was subject to in the hands of his debtor": *per* Strong C. J., *Jellett* v. *Wilkie* (1).

The important issue, therefore, is what interest the judgment debtor had at the time the executions were registered in the Land Registry Office, or more particu-

(1) (1896) 26 Can. S.C.R. 282, at 288.

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larly in this case, what is the significance and effect of the delivery by the respondent of the transfer duly executed to the Minto Trading and Development Company Limited. The determination of this question must be had from the provisions of the *Land Registry Act.*

The following section of the *Land Registry Act,* R.S.B.C. 1936, Ch. 140, is relevant:

> 34. Except as against the person making the same, no instrument * * * purporting to transfer, charge, deal with, or affect land or any estate or interest therein, shall become operative to pass any estate or interest, either at law or in equity, in the land * * * until the instrument is registered in compliance with the provisions of this Act; * * *

The respondent relies upon the decision of *Entwisle* v. *Lenz & Leiser* (1). There the holder of an unregistered transfer brought action to have the judgment registered against the land, since the execution and delivery of the transfer, removed as a cloud upon his title. The learned trial judge decided under the then section 74 (now section 34 of the *Land Registry Act*) in favour of the execution creditor. His decision was reversed in the Court of Appeal where the learned judges did not discuss the provisions of the *Land Registry Act,* but rested their decision upon section 3 of the *Judgments Act,* R.S.B.C. 1899, Ch. 33 (now section 35, *Execution Act,* R.S.B.C. 1936, Ch. 91):

> Immediately upon any judgment being entered or recovered in this province, the judgment may be registered in any or all of the Land Registry Offices in the province, and from the time of registering the same the judgment shall form a lien and charge on all the lands of the judgment debtor in the several land registration districts in which the judgment is registered, in the same manner as if charged in writing by the judgment debtor under his hand and seal; and after the registering of the judgment the judgment creditor may, if he wishes to do so, forthwith proceed upon the lien and charge thereby created.

This section was construed in the *Entwisle* case (1) as effecting no change in the common law. Somewhat similar statutes have been so construed. *Eyre* v. *McDowell* (2); *Case* v. *Bartlett* (3).

The *Entwisle* case (1) was criticized but not overruled in *Bank of Hamilton* v. *Hartery* (4). The criticism was based upon the provisions with respect to the effect of registration under the *Land Registry Act.* In 1921 cer-

(1) (1908) 14 B.C.R. 51.
(2) (1861) 9 H.L.C. 619.
(3) (1898) 12 Man. R. 280, at 286.
(4) (1919) 58 Can. S.C.R. 338.

tain amendments were made to that Act. Counsel for the respondent submits that at least some of these amendments were made, as a consequence of the criticism in this Court, for the purpose of clarifying the statute and continuing the law as laid down in *Entwisle* v. *Lenz & Leiser* (1). That was the view of the majority of the learned judges in *Gregg* v. *Palmer* (2).

One of the 1921 amendments inserted at the beginning of section 34 the words: "Except as against the person making the same". The section prior to that amendment read in part:

> No instrument * * * purporting to transfer * * * shall pass any estate or interest, either at law or in equity, in the land * * * until the instrument is registered * * *

It is apparent that prior to the insertion of these words the statute emphasized the importance of registration and it provided for what Lord Moulton described as "the absoluteness of the effect of the registration", *Loke Yew* v. *Port Swettenham Rubber Co. Ltd.* (3). It was, no doubt, the criticism of the *Entwisle* case (1) that brought to the attention of the legislature this conflict between section 34 and the decision in the *Entwisle* case (1). This conclusion is strengthened by the fact that section 34 had remained in the statutes without amendment since prior to the *Entwisle* decision (1) in 1908, but immediately following that criticism it was amended.

These words, "except as against the person making the same", expressly make operative an unregistered instrument against the party making the same. Therefore, the transfer executed by the respondent was operative to transfer to the Minto Trading and Development Company Limited whatever estate, either at law or in equity, he was in possession of. As a consequence the respondent, as execution debtor, had prior to the registration of this judgment divested himself of his interest in the land here in question. The conclusion, therefore, appears to be well founded that the legislature by this amendment has continued the decision in the *Entwisle* case (1) as law in British Columbia.

(1) (1908) 14 B.C.R. 51.
(2) (1932) 45 B.C.R. 267.
(3) [1913] A.C. 491, at 504.

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The Minto Trading and Development Company Limited is not asking to have the transfer registered under sections 175, 176 and 177 of the *Land Registry Act,* as enacted in 1921. They were, however, enacted at the same time as the words inserted in section 34 and may be helpful in understanding the meaning and effect of these words inserted at the beginning of section 34. Sections 175, 176 and 177 have to do with judgments in relation to those who apply for registration as owner or holder of a charge. A judgment is different from other encumbrances in that as registered it constitutes a blanket charge upon all the lands of the judgment debtor in that Land Registration District. Because of this a different system of registration is adopted and all judgments are listed under the name of the judgment debtor in a "Register of Judgments". Under this system questions arise with respect to the identity of owners and judgment debtors, for which a summary procedure is essential. But these sections go beyond the decision of such issues. In section 175 it expressly contemplates

> where application has been made to the Registrar to register the applicant as owner of land * * * and there is a judgment registered against the grantor of the fee-simple * * *

Then in section 176,

> * * * any judgment creditor * * * shall be entitled to be paid * * * as costs of investigating the bona fides of the claim of the applicant that he is entitled to priority to the judgment.

Then in section 177 it is provided that where the instrument is entitled "to priority over the registered judgment" the Court may nevertheless allow costs to the judgment creditor

> if in the opinion of the Court the judgment creditor was justified under the circumstances * * * in requiring the applicant to have judicially established the bona fides and validity of the execution of the instrument under which the applicant claims.

These sections indicate that upon such applications the question of priority shall be determined, a matter which, prior to the amendments of 1921, was settled by the provisions of the sections corresponding to sections 34, 36 and 37. Indeed, the implication appears to be that, if the instrument is found to be *bona fide* and validly executed, it is entitled to priority over the judgment creditor under circumstances such as obtain in this case.

These statutory provisions, read, as they must be, in association with section 34, retain the common law rule with respect to rights of judgment creditors. Under that rule the execution creditor can only attach that interest which exists in the execution debtor. The respondent having disposed of his entire interest before the registration of the judgment, this judgment cannot attach the land in question as certified by the Registrar.

The learned judge, in confirming the District Registrar's report, based his judgment upon the amendment made to the *Land Registry Act* in 1913 to the then section 22, now section 37. The material portion of that amendment substituted "conclusive evidence at law and in equity" for the words "conclusive evidence in all Courts of Justice". With deference to the learned trial judge, this amendment does not appear to effect the change which he suggests. All the Courts having to do with these matters apply the rules and principles of both law and equity. Moreover, it appears that the amendments made in 1921 and already discussed deal more specifically with the subject and if section 37 (section 22 in 1913) was intended to effect such a change as suggested by the learned trial judge, the legislature would, no doubt, have further amended that section in 1921.

In my opinion, the appeal should be dismissed with costs.

KELLOCK J.—This is an appeal from the order of the Court of Appeal for British Columbia dated 27th April, 1945, allowing an appeal by the respondents from the judgment or order of Wilson J. dated October 25, 1944, giving directions for the sale of certain lands of which the respondent Warren Asa Davidson is the registered owner and of which the respondent company holds an unregistered transfer.

The facts briefly are, that on the 10th of June, 1935, the respondent Warren Asa Davidson conveyed the lands in question to the respondent company but the transfer was not registered and to date no application to register has been made by the transferee. On the 23rd of January, 1939, the appellant, who is the wife of the respondent Warren Asa Davidson, obtained judgment against her husband, which judgment was registered in the proper land

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registration office on the 23rd of July, 1943. On the 27th of March, 1944, the appellant obtained another judgment against her husband, which in turn she registered on the 30th of March, 1944.

Pursuant to the provisions of section 38 of the *Execution Act,* R.S.B.C. 1936, Cap. 91, an application was made by the appellant to the Chief Justice of British Columbia, by whom an order was made on the 16th of May, 1944, referring the matter to the Registrar of the Supreme Court for the purpose of ascertaining what lands of the judgment debtor were liable to be sold pursuant to the provisions of the statute in order to realize the amount of the judgments. It was pursuant to this order that the report of the Registrar was made, upon which the later proceedings already mentioned were founded. The issue throughout the proceedings was as to whether or not the interest of the registered owner in the lands was subject to sale irrespective of the unregistered transfer.

Sec. 38 already referred to provides that where any judgment creditor has registered a judgment in a Land Registry Office, a motion may be made by him calling upon the judgment debtor and upon any trustee or other person having the legal estate in the land in question, to show cause why any land in the land registration district in which the judgment is registered, or the interest therein of the judgment debtor, or a competent part of the land, should not be sold to realize the amount payable under the judgment. Sec. 39 provides that upon such an application such proceedings shall be had either in a summary way or by the trial of an issue, or by enquiry before an officer of the Court, or by an action or otherwise, for the purpose of ascertaining "the truth of the matters in question, and whether the lands, or the interest therein of the judgment debtor, are liable for the satisfaction of the judgment." By sec. 35 provision is made for the registration of a judgment and the section enacts that

> from the time of registering the same the judgment shall form a lien and charge on all the lands of the judgment debtor in the several land registration districts in which the judgment is registered, in the same manner as if charged in writing by the judgment debtor under his hand and seal; and after the registering of the judgment the judgment creditor may, if he wishes to do so, forthwith proceed upon the lien and charge thereby created.

By sec. 40, it is provided that upon any application made under sec. 38 there shall be included in the order a reference to a District Registrar of the Supreme Court to find what lands are liable to be sold under the judgment, and what are the nature and particulars of the interest of the judgment debtor in the lands and of his title thereto, and what judgments form a lien and charge against the lands and the priorities between the judgments, to determine how the proceeds of the sale shall be distributed, and to report all such findings to the Court. It is further provided that the District Registrar shall cause all persons affected by his enquiries to be served with notice. The Registrar's report is subject to confirmation by a Judge of the Supreme Court, and all persons affected thereby shall have notice of the application for confirmation. By sec. 42 provision is made for an order for sale consequent upon the report of the Registrar, and by sec. 43 it is provided that where it appears on any application for an order for sale that there may be persons interested in the land to be sold whose names are unknown to the judgment creditor, the Court may direct advertisements calling upon all persons claiming to be interested in the land to come in and establish their claims within a limited time after which such persons shall be debarred.

In *Jellett* v. *Wilkie* (1), Strong, C. J., giving the judgment of the Court, said at p. 288:

> No proposition of law can be more amply supported by authority than that which the respondents invoke as the basis of the judgment under appeal, namely, that an execution creditor can only sell the property of his debtor subject to all such charges, liens and equities as the same was subject to in the hands of his debtor.

In that case, it was held that this rule of law was not affected by the provisions of sec. 94 of the *Territories Real Property Act* there in question and that an execution creditor who had registered his writ of execution before registration of transfers from the registered owner bearing date prior to the date of registration of the execution was subject to the transfer.

It is contended on behalf of the appellant that by reason of the provisions of sections 34 and 37 of the *Land Registry Act,* R.S.B.C. 1936, Cap. 140, the rule of law

(1) (1896) 26 Can. S.C.R. 282.

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applied in *Jellett's* case (1) is not applicable in the case at bar. Sec. 34 enacts in brief, so far as is relevant, that, except as against the person making the same, no instrument purporting to transfer land shall become operative to pass any estate or interest, either at law or in equity, in the land until the instrument is registered in compliance with the provisions of the Act, but such instrument shall confer on the transferee and on every person claiming through or under him the right to apply to have the instrument registered, and to use the names of all parties to the instrument in any proceedings incidental to registration. By sec. 37 it is provided that every Certificate of Indefeasible Title issued under the Act shall be received in evidence in all Courts of Justice in the province without proof of seal or signature and so long as it remains in force and uncancelled shall be conclusive evidence at law and in equity, as against His Majesty and all persons whomsoever, that the person named in the certificate is seized of an estate in fee-simple in the land therein described against the whole world, subject to certain exceptions. One of these is clause (*g*): "any *lis pendens* or mechanic's lien, judgment, caveat, or other charge * * * registered since the date of the application for registration."

In *Entwistle* v. *Lenz* (2), the Court of Appeal of British Columbia held, having regard to the predecessor of sec. 35 of the *Execution Act,* that an execution registered prior to an unregistered conveyance made before judgment was obtained, was subsequent in priority to the conveyance and allowed an appeal from the judgment of the trial judge who had held that sec. 74 of the *Land Registry Act* of 1906, 6 Edward VII, Cap. 23, gave the execution priority. That section, which is the predecessor of the present sec. 34, differed in some respects from the present section in that it did not have the words "except as against the person making the same" at the beginning of the section, and instead of providing as at present that the unregistered transfer should not "become operative to pass" provided that it "should not pass." It was also without the provision giving the unregistered transferee the right to use the names of the parties to the instrument in proceedings for registration.

(1) (1896) 26 Can. S.C.R. 282. (2) (1908) 14 B.C.R. 51.

This decision was adversely commented upon by Anglin J., with whom Mignault J. agreed, in *Bank of Hamilton* v. *Hartery* (1). The Court in the last mentioned case had to deal, not with an execution and a competing unregistered transfer, but with a mortgage and a judgment both of which had in fact been registered, and as that situation was specifically dealt with by sec. 73 of the then *Land Registry Act,* namely, R.S.B.C. 1911, Cap. 127, it was not necessary to deal with the soundness of the judgment in the *Entwisle* case (2). The judgment of the Court of Appeal in the *Entwisle* case (2) proceeded upon the view that the registered owner who had made the unregistered transfer was merely the holder of the dry legal estate and that the beneficial interest had passed to the transferee notwithstanding the provisions of sec. 74.

Since the decision in *Hartery's* case (1), the *Land Registry Act* was amended and consolidated in 1921 by Cap. 26 of the statutes of that year and the differences already pointed out as between the present sec. 34 and old sec. 74 were then made.

In 1932, the Court of Appeal of British Columbia in the case *Gregg* v. *Palmer* (3), held, Macdonald C.J.B.C. and Galliher J.A. dissenting, that as between an applicant to register a mortgage and a registered judgment creditor the former was entitled to priority. The majority held that the decision in *Hartery's* case (1) did not apply, (1) because in that case, as already pointed out, the mortgage had been registered, while in *Gregg's* case (3) the mortgagee had merely applied to register, and (2) because of the changes in the legislation since the decision in *Hartery's* case (1). Since the decision in *Gregg's* case (3), there has been a further revision of the statutes in British Columbia and the relevant provisions of both the *Execution Act* and the *Land Registry Act* have been re-enacted without change.

In my opinion, the question raised by the present appeal is to be determined adversely to the appellant. Notwithstanding the provisions upon which the appellant relies, I think that the conclusion to which one must come by virtue of the presence in the statute of Part IX deal-

(1) (1919) 58 Can. S.C.R. 338. (2) (1908) 14 B.C.R. 51.
(3) (1932) 45 B.C.R. 267.

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ing with "judgments" is that in such circumstances as are here present the judgment attaches only upon the interest of the execution debtor in the lands subject to the unregistered transfer. Sections 174 to 177 appear to be based upon that view of the statute.

By sec. 175 it is provided that where application has been made to the Land Registrar to register the applicant as owner of land and there is a judgment registered against the grantor, the Registrar may in his discretion cause a notice to be given to the judgment creditor of his intention at the expiration of a time fixed by the notice to effect registration in pursuance of the application. If the judgment creditor claims a lien upon the lands covered by the application, he is required, within the time fixed by the notice, to follow the procedure for enforcing his charge defined in sections 38 to 44 of the *Execution Act* and to register a certificate of *lis pendens*, otherwise the Registrar may register the applicant free from the judgment. By sec. 176, it is provided that where the above notice is served and it appears that the title of the applicant for registration is founded upon an instrument executed more than one month before the application for registration the judgment creditor is entitled to be paid by the applicant $5 as costs of investigating "the bona fides of the claim of the applicant that he is entitled to priority to the judgment." Sec. 177 provides that where proceedings are taken under sections 38 to 44 of the *Execution Act*

> and fail by reason of the finding of the Court that the instrument under which the applicant for registration * * * claims is entitled to priority over the registered judgment, the Court may, in its discretion, dismiss the proceedings without costs, or allow costs to the judgment creditor, if in the opinion of the Court the judgment creditor was justified under the circumstances, including the delay in application for registration, in requiring the applicant to have judicially established *the bona fides and validity of the execution of the instrument* under which the applicant claims.

If mere priority in point of time in registration of a judgment entitled the judgment creditor to priority over an unregistered transfer were sufficient, I find it impossible to give any meaning to the sections just referred to. As I have said, I think the only meaning that can be given to them in such a case as the present is that where

there is no question between the parties, apart from the time of the execution of the transfer and the time of the registration of the judgment, the former is entitled to priority. It may be noted that no question arises, as in *Hartery's* case (1), under the provisions of the present section 42 of the Act, as it is not a case of competing registered charges.,

It may be pointed out that, while sec. 177 of the Act was not in force at the time of the decision in *Hartery's* case (1), provisions similar to or identical with sections 174 to 176 were, however, in the statute before that case was decided; see Statutes of British Columbia, 1914, Cap. 43, sec. 70; 1916, Cap. 32, sections 27 and 28. These provisions, however, were not dealt with in the judgments in that case, but they were, however, drawn to the attention of the Court in the factum of the respondent. It is true that in the case at bar sec. 175, subsection 1, is predicated upon an application for registration having been made by the holder of the unregistered conveyance, but although no such application has as yet been made by the respondent company, I do not think this fact affects the result. The judgment creditor has taken the proceedings he was entitled to take under the *Execution Act* which are the same proceedings the respondent company would have to call upon the appellant to take if the company desired to apply for registration and to obtain priority over the appellant's judgments. I do not think the appellant can take the position, if otherwise sound, that under the provisions of sections 34 and 37 of the *Land Registry Act* she is entitled to priority and that Part IX of the Act may not be looked at because of the fact that there is no application on the part of the respondent company to register. The result of this would be that the respondent company would be left free to apply to register under the provisions of Part IX, in which event I do not think the fact that proceedings had already been taken at the instance of the judgment creditor under the *Execution Act* would constitute an estoppel so as to prevent the provisions of Part IX having their due application with a resulting priority in favour of the respondent company. I think that, not-

(1) (1919) 58 Can. S.C.R. 338.

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withstanding there is no application to register on the part of the respondent company, the sections included in Part IX may be looked at for the purpose of interpreting the statute as a whole, and when this is done the result is, in my opinion, as already stated.

In his judgment in the case at bar, Wilson J. pointed out that at the time of the decision in the *Lenz* case (1) the predecessor of the present sec. 37 (then sec. 81 of 6 Edward VII, Cap. 23, referred to by Wilson J. as R.S.B.C. 1911, Cap. 127, sec. 22) provided that a certificate of indefeasible title should be "conclusive evidence in all Courts of Justice" that the person named therein was seized of an estate in fee simple, and that some five years after the decision in that case, by 3 George V, Cap. 36, sec. 8, the subsection was amended by substituting for the words above quoted the following, namely, "conclusive evidence *at law and in equity* as against His Majesty and all persons whomsoever." In the opinion of Wilson J., this change indicated an intention on the part of the legislature contrary to the decision in *Lenz's* case (1), founded, as it was, upon the view that the holder of the unregistered transfer held the beneficial title. In the opinion of Wilson J., the amendment of 1913 was intended to prevent such a view being taken thereafter and to render the certificate of title conclusive evidence that not only the legal estate but the beneficial estate remained in the registered owner. It was also pointed out by Wilson J. that *Hartery's* case (2) was a decision on facts differing from those existing in *Lenz's* case (1) and decided on that ground and that the facts in the case at bar are similar to those in *Lenz's* case (1), and different from the facts in *Gregg's* case (3). He also pointed out what I have already mentioned, namely, that while in the judgments in *Gregg* v. *Palmer* (3), Part IX of the *Land Registry Act* or its predecessor was necessarily taken into consideration, the Part is predicated upon an application to register on the part of the holder of the unregistered instrument. He was of the opinion that those sections could not be invoked in the case at bar, and for that reason and also because of the difference in facts, he did not consider that the decision in *Gregg* v. *Palmer* (3) applied. He did consider that he

(1) (1908) 14 B.C.R. 51.
(2) (1919) 58 Can. S.C.R. 338.
(3) (1932) 45 B.C.R. 267.

was bound by *Lenz's* case (1), but in view of the amendment of 1913, he thought his decision should now be in favour of the judgment creditor. In the Court of Appeal, the appeal was allowed. O'Halloran J. A., giving the judgment of the Court, dealt only with the amendment of 1913 and held that, read in its context, it did not change the meaning of the section.

But for the presence in the statute of the group of sections included in Part IX, there would be much, in my view, to be said in favour of the contention upon which the appellant rests her case. However, it is not necessary to express any final view on this question, in view of the conclusion to which I have come by reason of the presence in the statute of Part IX, which proceeds upon the basis that the result of proceedings by a judgment creditor under sections 38 et seq. of the *Execution Act*, where there is no lack of *bona fides* attaching to the unregistered conveyance and the latter is validly executed, is to give priority to the unregistered conveyance and that this priority is effective under the *Land Registry Act*.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *T. E. Wilson.*

Solicitor for the respondent: *J. C. Ralston.*