

18 Feb., 1896.

Ontario.]

ROOKER V. HOOFSTETTER.

*Mortgage—Agreement to charge lands—Statute of frauds—Registry.*

The owner of an equity of redemption in mortgaged land, called the Christopher farm, signed a memorandum as follows :

" I agree to charge the east half of lot no. 19 in the seventh concession of Loughborough, with the payment of two mortgages held by G. M. G. and Mrs. R. respectively upon the Christopher farm . . . amounting to \$750 . . . and I agree on demand to execute proper mortgages of said land to carry out this agreement or to pay off the said Christopher mortgages."

*Held*, affirming the decision of the Court of Appeal (22 Ont. App. R. 175) that this instrument created a charge upon the east half of lot 19 in favour of the mortgagees named therein.

This agreement was registered and the east half of lot 19 was afterwards mortgaged to another person. In a suit by one of the mortgagees of the Christopher farm for a declaration that she was entitled to a lien or charge on the other lot, it was contended that the solicitor who proved the execution of the document for registry as subscribing witness was not such, but that the agreement was in the form of a letter addressed to him.

*Held*, affirming the judgment of the Court of Appeal, that as the agreement was actually registered the subsequent mortgagee could not take advantage of an irregularity in the proof, the registration not being an absolute nullity.

*Held*, per Taschereau, J., that if there was no proof of attestation, the Registry Act required a certificate of execution from a County Court judge, and it must be presumed that such certificate was given before registry.

Appeal dismissed with costs.

*Smythe, Q. C.*, for the appellant.

*Langton, Q. C.*, for the respondent.