the plaintiff's deed; that the registry laws did not provide in such a case, for the registration of a power, but merely for the registration of a deed, which in itself operated by way of consequence; and that the plaintiff's deed, having priority of registration over the deed executed under the power, took precedence of it. There is great room for argument in support of this position; but on reflection, I think it cannot be sustained under the law as it has been administered and understood to exist. In the first place, it is said that the registration of a mere power, though coupled with an interest, would be ineffectual against a subsequent conveyance of the estate, registered or unregistered, as the registry law—at all events as it stood in 1846—did not provide for the position of such a document, or the right given by it. Is this so clear? In the first place, it is urged, on the other side, that a power coupled with an interest—as for instance a mere power of sale over an estate to repay a loan—cannot be revoked, unless it be by force of the registry laws. Cannot it then be secured from such revocation by force of the same laws? We must look at their intent and object to consider this. The statute 9 Vic. cap. 34, sec. 2, gives the effect therein prescribed to all deeds and conveyances, "whereby any lands, &c., may be in any wise affected in law or equity." A deed is not necessarily a conveyance. It is an instrument under seal, and when executed *inter partes* is called an indenture. Suppose an indenture, whereby A. acknowledges the receipt from B. of a sum of money, covenants to repay it, and in default gives to B. power to sell the land, such a deed certainly affects the land in equity, and would be executed by this court if necessary.

I am not, however, driven to decide upon this more naked position. In the present case the mortgage which contains the power of sale is a consequence, and the bill admits that the plaintiff's deed must be postponed to it so far as it is a mortgage; but he argues, as already stated, that the power of sale is inoperative as against him. It was, I believe, conceded—and at all events it has been too long admitted law for me to venture to question it—that if a mortgage with a power of sale be registered, any sale made and deed executed legally under that power will cut out any deed intermedially made by the mortgagor and registered. If this be so, it must dispose of the whole question, because it can only be by force of the registry laws that the exercise of the power of sale could have any such effect. If it is only the conveying part of the deed that by the registry laws can gain priority or effect, and not the power of sale, then it would follow that a deed made and registered subsequently to such a conveyance would cut out a deed executed afterwards under the power, and yet by universal practice and consent such has not been its effect. If the power of sale in such a conveyance can therefore, under the registry laws, give to a deed executed by virtue of it priority over a deed made subsequently to such a conveyance, but made and executed prior to the exercise of the power, the same effect, in my opinion, must be given to it in relation to a deed executed as here before the conveyance containing the power, but not registered till after that conveyance.

Demurrer allowed.

Bank of Montreal v. Woodcock.

Judgment creditor—Registration.

Where a bill has been filed prior to the 18th of May, 1861, *all* judgment creditors who had their judgments duly registered, are entitled to be treated as parties to the cause, though not actually named in the bill, and not added as such in the master's office until after that date, without having placed *fi fas.* against lands in the hands of the sheriff.

This was an appeal from the report of the master of this court at Woodstock, upon the ground that he had refused to allow the claim of a judgment creditor.

Burton for the apellant.

Leys, for subsequent incumbrancers, contended that the apellant had no right to prove, he having omitted to sue out a *fi. fa.* against lands, as had been done by the other judgment creditors.

Barrett for the plaintiffs.

Esten, V. C.—This is an appeal by a judgment creditor, whose claim has been disallowed by the master under these circumstances. the suit, which is for foreclosure or sale, was pending on the 18th of May, 1861, the judgment in question was registered in December, 1858. The appellant was added as a party in the master's office, and proved his claim in October, 1861, but it was rejected by the master, and excluded from his report, on the ground that at th date of it more than three years had elapsed since the registration of the judgment, and that it had not been re-registered. The appeal is on the ground that the claim ought to have been allowed, and I am of that opinion. It has been decided in this court that the effect of the 11th section of 24 Vic., ch. 41, is to preserve the charge created by a judgment registered before the 18th of May, 1861, the owner of which would be a proper party to a suit pending on that day. The charge created by this judgment was therefore preserved; and it could not be re-registered, because the 64th section of the 22nd Vic, ch. 89, which provides for the re-registration of judgments was repealed by the 24th Vic., ch. 41. The charge of the judgment in question was created by its previous registration, this charge is preserved generally; the provision that it should cease at the expiration of three years without re-registration was repealed. The legislature could not have meant that the rights which it had saved should expire for want of an act which it had rendered impossible. It was ingeniously and plausibly argued, that the only effect of the 11th section of 24 Vic., ch. 41, was to leave the rights of judgment creditors, parties to suits pending on the 18th of May, 1861, in precisely the same state in which they would have been if that act had not passed, and as in that case the charge created by such judgment creditor's judgment would have expired upon the expiration of *three* years without re-registration, the same result must follow under the 11th section of 24th Victoria, ch. 41. If this view is correct it must equally follow that this section also provided for the re-registration of judgments, but as this cannot be seriously, and was not in fact, contended, I think the proposed construction of this section incorrect. I rather think the intention of the legislature was to dispense with re-registration in regard to the comparatively few judgments which were saved as a charge upon lands by the 11th section of the 24th Vic., ch. 41, and which would diminish in number every day, and shortly become altogether extinct. The inconvenience intended to be obviated by re-registration would in regard to these judgments be so slight that the legislature did not think it probably worth while to re-enact with respect to them the 64th section of 22 Vic., ch. 89.

It was also argued that the judgment creditor should have issued his writ of execution, and delivered it to the sheriff, and thereby preserved the lien of his judgment. This proceeding would not have preserved the existing lien, but created a new one. I do not perceive the bearing of this argument on the question. The right arising from a writ against lands delivered to the sheriff for execution, was very different from the lien or charge preserved by the 11th section of 24 Vic., ch. 41. That enabled the judgment creditor to pray a sale of the estate in equity; the other merely enabled the judgment creditor to redeem the estate if in mortgage. If a judgment creditor had filed a bill for a sale before the 18th of May, 1861, and the three years had expired before he had prosecuted his suit to a conclusion, he could not have continued it, although he might have delivered a writ against lands to the sheriff before the 1st of September. The 12th section of 24 Vic., ch. 41, was only intended to regulate priority amongst judgment creditors.

I think the exception should be allowed without costs.

Boddy v. Finley.

Duress—Costs.

A party, having been arrested on a charge of obtaining money under false pretences, agreed, in presence of the magistrate who had issued the warrant, to execute a mortgage on his farm to secure the amount; whereupon he was discharged, and he, together with the complainant who had sued out the warrant, went to a conveyancer and gave instructions for the conveyances which he subsequently executed. Afterwards a bill was filed by the mortgagor to set the instrument aside as having been obtained by duress and oppression. The court, under the circumstances, refused the relief sought, but as the conduct of the defendant had been harsh and oppressive, dismissed the bill without costs.

The facts are stated in the judgment.

Fitzgerald for plaintiff. *Roaf* for defendant.

Spragge, V. C.—The conveyance impeached in this suit was executed under the following circumstances: the plaintiff was the owner of the west half of lot number one, in the second concession of the township of Malahide, subject to a mortgage to one Wilson for $700. He sold the west half of this parcel of land to the defendant for $400. The defendant in his answer says that he