

## COMMON LAW EQUITY—LAW SOCIETY.

to relief; then if A. makes a mortgage to B. on the first of the month, and another to C. on the tenth of the same month, and C. registers his mortgage, and subsequently B. registers his, and C. has no actual notice of B.'s mortgage, C. will be entitled to maintain a bill to vacate the registry of B.'s mortgage, because it is by the Registry Act to be adjudged fraudulent and void as against him, and being of a prior date to his mortgage it causes him embarrassment in disposing of his mortgage."

This, however, is a simple *non sequitur*, and the fallacy arises from the common law notion that the same judgment must follow in every case coming within sec. 74, irrespective of the circumstances. To an equity lawyer this method of reasoning must appear absurd, because he is aware that the particular circumstances of each case must be considered in administering equity, and the judgment must be bent to suit the circumstances.

The aim of equity, properly understood, is to do substantial justice between litigants, and while giving one party his rights, not needlessly to oppress his adversary nor infringe upon his rights.

In the case which Mr. Justice Armour puts, we think the obvious answer is, that the equity of the case would be amply answered by a simple declaration that the subsequent mortgage of C., by virtue of its prior registration, was entitled to priority over that of B.—that would enable C. to dispose of his mortgage, or otherwise deal with the mortgaged property as amply as if he had been first in date as well as by registration. To decree under such circumstances a removal of B.'s mortgage from the register would be an injury to B. beyond what the necessity of doing justice to C. would call for. But where, as in the case before the court, the subsequent conveyance is an absolute conveyance of the whole estate, and the existence of any

outstanding lien or interest in any third person is altogether inconsistent with the subsequent grantee's possession of that absolute estate, then equity requires, in order that full justice may be done to the subsequent grantee, that the prior deed, which is subsequently registered, should be removed from the register.

We should hope that the case may be carried to appeal, as in our judgment it amounts to a virtual repeal of sec. 74 of the Registry Act.

## LAW SOCIETY.

## TRINITY TERM, 1886.

The following is the *résumé* of the proceedings of Convocation on the 29th June, and of Trinity Term, 1886.

TUESDAY, 29TH JUNE.

Convocation met.

Present—The Treasurer, and Messrs. Falconbridge, Foy, Fraser, Irving, McCarthy, Mackelcan, MacLennan, Martin, Morris, Moss, Murray, Osler, Purdom, Robinson, Smith.

The minutes of last meeting were read and approved.

Mr. Murray presented a joint report from the Committee on Finance and Legal Education on the subject of fees to examiners on primary examination, recommending that when one examiner conducts the whole examination the same rate of remuneration be allowed as when two act, and that this apply to the last primary examination.

The report was read and received.

Ordered for immediate consideration and adopted.

Mr. Murray introduced a rule to give effect to the report.

Ordered, that the rule be read a first time.

Ordered for a second reading on the second day of next Term.