

it will be seen from the decisions to which we shall hereafter refer, that the vendor may exercise it until the registry of a conveyance of his interest in the lands. The 3rd section in effect says, that the registered deed shall be *prima facie* evidence of title in the party whose name appears in the last registered deed.

The difficulty which arises is this: will a judgment, registered against a party whose name appears in the last registered deed of a lot of land, and who, before such registration of judgment, had conveyed away all his interest to another, bind that land so as to cut out the deed of the last purchaser? According to the 2nd section, the answer should be in the negative, for under it the judgment is to bind whatever interest the debtor has in the land *at the time of registering* such judgment; and having conveyed away all his interest before such registration, there remains no estate or interest to be bound. But by the 3rd section, the registration being *prima facie* evidence of title, it would seem that the judgment would bind; for the unregistered conveyance to a purchaser is there declared to be "fraudulent and void against the subsequent judgment creditor, who has registered his judgment." The 2nd section is in harmony with the common law by which a vendor's subsequent dealing with property, when he had parted with his estate in it, was declared of no effect; while by the 3rd section, a vendor may make as many conveyances as he pleased, and if the last obtained registration before the others, it conveyed the estate. On this point we may quote the words of Esten, V. C., in *Waters v. Shade* (2 Gr. Ch. 457): "In the case of a sale and conveyance of land first to one person, and then to another who first registers his conveyance, the estate of the grantor at the time of the execution of the second conveyance has not been converted into a mere right—he has no right at all—and the second conveyance is *per se* wholly void, but made good by the Registry Act, which is a great innovation upon the common law, and which avoids the prior conveyance as, in the contemplation of the law, fraudulent against the subsequent purchaser; the consequence of which is, that at the time of the execution of the second conveyance, the grantor is in the event deemed to have had the absolute fee simple of the estate." So also Draper, C. J., in *Bruyere v. Knox* (8 U. C. C. P. 520 & post 211): "When the owner in fee simple conveys his lands in fee to a purchaser for valuable consideration, he ceases to have any right, title or estate whatever; and consequently at the common law, any attempt on his part to make a subsequent sale or other disposition of them, would be nugatory and void. Nevertheless, the Registry acts do enable that owner to make a second conveyance for valuable consideration to another purchaser; and if such second conveyance obtains

priority of registration as against those claiming under it, the first conveyance is fraudulent and void."

According to these, then, we must consider that the statute 13 & 14 Vic. cap. 63, has to some extent modified the law as laid down in *Doe dem. Spafford v. Breakenridge* (1 U. C. C. P. 492), which was, that the registration of a deed from a person having a fraudulent title, would not give priority over a deed from a person having a good title.

But if the second (but prior registered) conveyance is executed *without a valuable consideration*, it confers no title upon the grantee, as against the *bona fide* purchaser for value; yet, as it remains on record as a cloud upon the title, the Court of Chancery will decree its removal, as the Registry Act operates in favor only of purchasers for valuable consideration, *Ross v. Harvey* (3 Gr. Ch. 649). But if by a mistake in a registered deed, a portion of the property intended to be conveyed is omitted, and a judgment is afterwards registered against the vendor, such judgment shall not fasten upon the portion unconveyed by mistake. *McMaster v. Phipps* (5 Gr. Ch. 253). But *quære* as to notice.

But do the same rules apply to judgments, so as to make a registered judgment equivalent to a conveyance by a vendor of his estate? To decide this, we must first determine what is the nature of the charge created by a registered judgment. The act declares it to have the effect of an instrument in writing by the debtor, charging his lands with the amount of the debt and costs; and Lord Chancellor Sugden, in *Rolleston v. Morton* (1 D. & W. 195), referring to a similar provision in the English and Irish acts 1 & 2 Vic. and 3 & 4 Vic., says, "The act of Parliament is perfectly clear and free from all ambiguity and doubt. That which formerly, by force of the statute of Westminster, was a general charge upon lands, now, by force of the express directions of the act, becomes a specific lien—a specific incumbrance: words cannot be more express." So in our own Court of Chancery, in *McMaster v. Phipps* (5 Gr. Ch. 253), the Chancellor, in giving judgment, after stating that the statute 13 & 14 Vic. settles the priority between conflicting deeds and instruments which admit of registration, went on to say: "Previous to this statute, purchasers and judgment creditors stood upon an entirely different footing. A judgment creditor had, by virtue of his judgment, a general lien, or *quasi* lien, upon the estate of his debtor; but that lien was confined, and in reason it should have been confined, to property in which the debtor had a beneficial as well as legal interest. Now it must be admitted that this state of the law has been altered to a considerable extent by the recent statute. For some purpose, judgments are treated as conveyances; and when registered deeds and judgments come into com