

Mathers, J.]

[Feb. 19.]

## CANADIAN PORT HURON CO. v. BURNETT.

*Priority as between unregistered equitable charge and subsequent registered conveyance—Effect of grant of land by registered owner "according to his estate and interest therein and as fully and effectually as he lawfully can or may" to an assignee for the benefit of creditors.*

The defendant Burnett, having purchased machinery from the plaintiffs on credit executed an agreement under seal giving a lien on certain farms therein described.

This agreement could not, under s. 4 of the Lien Notes Act, R.S.M. 1902, c. 39, be registered, but after default by Burnett the plaintiffs commenced their action to realize their claim out of the farms and registered a certificate of lis pendens against the farms in the proper land titles offices. A few days afterwards Burnett made an assignment for the benefit of his creditors to the defendant, which was duly registered. As regards Burnett's lands, the wording of the assignment was as follows: "The said debtor according to his estate and interest therein and as fully and effectually as he lawfully can or may . . . by these presents doth hereby grant . . . unto the said trustee . . . all the real estate, lands, tenements and hereditaments of the said debtor . . . of or to which he may have any estate, right, title or interest of any kind or description with the appurtenances."

*Held*, that such deed purported to deal only with such estate or interest in the land as the grantor then had and did not operate or assume to operate so as to convey the land free from the equitable charge or lien previously given to the plaintiffs.

Secs. 6 and 7 of R.S.M. 1902, c. 8, do not help the assignee as the assignment is not in the words or to the like effect of the words given in s. 6, and s. 7 provides only that every assignment . . . shall vest the estate "thereby assigned" in the assignee, and does not assume to give the deed of assignment any larger effect in the way of passing property than on its face it purports to have.

The only interest, therefore, that passed to the assignee being what was left after the plaintiffs' equitable charge should be satisfied, neither The Registry Act nor the Lien Notes Act can have any application, as they only apply to invalidate