

Ontario.]

[Feb. 18.]

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 Court of Appeal (22 A. R. 175), that this instrument created a charge upon the east half of lot 19 in favor 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.

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NEELON v. CITY OF TORONTO AND LENNOX.

Contract—Inconsistent conditions—Dismissal of contractor—Architect's powers—Arbitrator—Disqualification—Probable bias—Evidence, rejection of—Judge's discretion as to order of evidence.

A contract for the construction of a public work contained the following clause: "In case the works are not carried on with such expedition and with such materials and workmanship as the architect or clerk of the works may deem proper, the architect shall be at liberty to give the contractors ten days notice in writing to supply such additional force or material as in the opinion of the said architect is necessary, and if the contractors fail to supply the same it shall then be lawful for the said architect to dismiss the said contractors, and to employ other persons to finish the work." The contract also provided that "the general conditions are made part of this contract (except so far as inconsistent herewith), in which case the terms of this contract shall govern." The first clause in the "general conditions" was as follows: "In case the