

In *Brown v. McLean*, the contest was between the plaintiff, who had advanced money to the owner of real estate to pay off existing mortgages thereon, and the defendant, an execution creditor of the mortgagor. The mortgages were paid off and discharged, and a new mortgage given to the plaintiff to secure the advance. Prior to the discharge of the mortgages, the defendant had placed his execution in the sheriff's hands against the lands of the mortgagor, and he claimed that by virtue of the discharge of the prior mortgages he had acquired priority over the plaintiff; and Street, J., as we think, very properly held that he had not. We must remember that an execution creditor's rights in his debtor's lands are strictly limited (apart from any question of fraudulent transfer) to the rights of the debtor himself in those lands. If his debtor is a mere trustee, the creditor cannot sell the trust estate to pay the debtor's private debt, even though the debtor appear to be the ostensible owner on the registry books. In short, apart from the operation of the Registry Act, an execution creditor cannot sell any other than the estate of his debtor which is exigible, having regard to the nature of the creditor's claim: (see *Freed v. Orr*, 6 Ont. App. 690). He has no legal or equitable right to be paid out of any other estate which happens to be vested in his debtor. Where the sale is, however, made of land which on the registry appears to be the property of the debtor, and the sale is carried out and the deed to the purchaser registered without notice of any unregistered equitable right, it is possible that the sheriff's vendee might be protected under s. 83 of the Registry Act against the claim of unregistered equitable owners, though we do not think the point has ever been actually determined. See, however, *VanWagner v. Findlay*, 14 Gr. 53.

But so far as the rights of the parties in *Brown v. McLean* were concerned, they were in no way complicated by the Registry Act. The simple question there was whether the debtor had an estate in the lands in question, free from the prior mortgages, which was liable to the defendant's execution. The principle on which *Hamilton Provident and Loan Society v. Gilchrist*, 6 Ont. 434, was decided, we think, clearly shows that he had not. A certificate of discharge of a mortgage, when registered under the Registry Act, operates as a reconveyance to the mortgagor. It has no other or wider effect. Assume that in *Brown v. McLean* a reconveyance had actually been made to the mortgagor without disclosing the plaintiff's equity, could it for a moment be successfully contended that the mortgagor could have held it, as against the plaintiff who had advanced the money? We think not. Equity would hold that there was a resulting trust for the latter, and that the mortgagor was his trustee of the estate reconveyed; therefore, by the discharge of the prior mortgages the execution debtor himself acquired no beneficial interest in the property free from those mortgages, and, therefore, the estate which became revested in him by the registration of the discharges, could not be exigible under executions against him.

In *Hamilton Provident and Loan Society v. Gilchrist*, no doubt the element of fraud existed; but as against competing execution creditors who were in no way affected by the fraud, it was held that the plaintiffs' equitable right to be regarded as the mortgagees of the land in question was sufficient to oust the right of the