

time, they succeeded in getting her to execute a mortgage in the proper form (23rd August, 1912), but could not record this by reason of the assignment to the defendant; that the plaintiffs then endeavoured to induce the defendant to recognise their right as mortgagees prior to his assignment, but he refused. The plaintiffs claimed: (1) a declaration that their mortgage was entitled to priority over the assignment; (2) a direction that the assignment be removed from the register or otherwise postponed to the mortgage; (3) costs.

The County Court Judge gave judgment declaring that the plaintiffs' mortgage was entitled to priority to the deed of assignment for the benefit of creditors made by S. A. Campbell to the defendant; directing that it be so recorded, and the register and records in the Land Titles office rectified accordingly; directing that the plaintiffs should value their security in connection with their claim against the estate of S. A. Campbell; that they should be entitled to add their costs of this action to their claim against the estate; and that the defendant's costs of the action should be paid out of the estate.

The appeal was heard by MULOCK, C.J.Ex., MACLAREN, J.A., CLUTE and RIDDELL, JJ.

G. G. S. Lindsey, K.C., for the appellant.

A. C. McMaster, for the plaintiffs, respondents.

MULOCK, C.J.Ex.:— . . . In my opinion the decision of the learned Judge was substantially correct, and should be modified in one formal respect only. The appellant is not a transferee for value; and by sec. 45 of the Land Titles Act, R.S.O. 1914 ch. 126, "a transfer of registered land, made without valuable consideration, shall be subject, so far as the transferee is concerned, to any unregistered estates, rights, interests, or equities subject to which the transferor held the same," etc.

The Land Titles Act deals simply with the question of registration; it does not interfere with any common law or other rights of an owner of land to mortgage the same by instrument not capable of registration under the Land Titles Act. The appellant, being a volunteer, acquired by the transfer from the mortgagor to him only the mortgagor's interest, or, in other words, took subject to the respondent company's lien: *National Bank of Australasia v. Morrow* (1887), 13 V.L.R. 2; *Jellett v. Wilkie* (1896), 26 S.C.R. 282.

The mortgage in question purports to convey the legal es-