

the judgment against the estate in the hands of the administrators, and issued execution accordingly.

*Held*, that the execution formed no charge or encumbrance on the lands contracted to be sold.

It is wrong to order an issue of execution against goods of a testator or intestate in the hands of an executor or administrator without giving the latter an opportunity to show cause.

*F. E. Hodgins* for the petitioners, the vendors.

No one appeared for the purchaser.

Full Court.]

[Jan. 10.

HOGABOOM v. GRAYDON.

*Bills of sale and chattel mortgages—Transfer from husband to wife—Actual and continued change of possession—R.S.O., c. 125, s. 1—55 Vict., c. 26, s. 3.*

*Held*, that if a transaction of sale takes place between a married woman and her husband as to furniture, etc., if she and her husband continue to live together as before, her right must be manifested and protected by a registered instrument if she wishes to hold as against his creditors, for there cannot be said to be in that case such an actual and continued change of possession as is required by the above enactments.

*Allan Cassels* for the defendant.

*Riddell* for the plaintiff.

Full Court.]

[Jan. 10.

STRIDE v. THE DIAMOND GLASS COMPANY.

*Employers' liability—Defect in "way"—Public street—55 Vict., c. 30, ss. 3, 6.*

The defendants' factory was built immediately on a public street which was fourteen feet wide at the place, but on the other side of that part of the street there was a steep declivity. One of their workmen was employed at the time of the accident in unloading straw off a wagon into the defendant's premises through an aperture facing the above portion of the street. He lost his balance, fell off the load of straw and down the declivity, and was killed. It was contended that if there had been a fence on the side of a street where the declivity was the accident would not have happened.

*Held*, that the defendants were not liable.

The defective condition of a public street used by an employer in connection with his business is not a "way used in the business of the employer" within the meaning of 55 Vict., c. 30, s. 3. The defect to render the employer liable must be on his premises, or on a place over which he had control, that could be made right by the employer, but this is not so in regard to a public street, upon which the employer had no right to construct a fence or barrier, as here suggested.

*Carscallen*, Q.C., for the plaintiff.

*Martin*, Q.C., for the defendants.