

RECENT ENGLISH DECISIONS—CANADIAN PACIFIC RY. V. HARRISTON.

brancers by prior registration; and that the priorities are regulated by the date at which the incumbrancers give notice to the trustee.

COMPANY—DEBENTURES—MORTGAGE—PRIORITY.

Wheatley v. Silkstone Coal Co., 29 Chy. D. 715. is a decision of North, J., upon a question of priority arising between the debenture holders of a joint stock company and certain mortgagees. The debentures purported to charge the undertaking and the hereditaments and effects of the company with the payment of the sums mentioned in the debentures respectively, to the intent that the debentures might rank equally as a first charge on the undertaking, hereditaments and effects of the company. After the issue of these debentures the company deposited title deeds with the plaintiff as security for an advance, and by a written agreement charged the property comprised in the deeds with the payment of the loan. North, J., held that the plaintiff was entitled to priority over the debenture-holders. The reason of the judgment may be gathered from the concluding paragraph, where the learned judge says:—

"In this case I find that the debenture is intended to be a general floating security over all the property of the company, as it exists at the time when it is to be put in force; but it is not intended to prevent, and has not the effect of in any way preventing, the carrying on of the business in all or any of the ways in which it is carried on in the ordinary course; and inasmuch as I find that the ordinary course of business, and for the purpose of the business, this mortgage was made, it is a good mortgage upon, and a good charge upon, the property comprised in it, and is not subject to the claim created by the debentures. I find also that the first charge referred to in the debentures is fully satisfied by being the first charge against the general property of the company at the time when the claim under the debentures arises and can have effect given to it."

The foregoing case may be considered in connection with that of *Re Horne & Hellard*, 29 Chy. D. 736, when a company had issued debentures for £500,000, by which they charged their property "to the intent that the same charge shall, until default in the payment of the principal or interest to accrue due or become payable in respect of the said sum of £500,000 or some part thereof, be a floating security upon the undertakings, works and

property of the company, not hindering sales or leases of, or dealings with any of the property or assets of the company in the course of its business as a going concern." The company having afterwards contracted to sell some of their land, the purchaser required evidence that there had been no default in payment of the principal or interest of the debentures, and it was held by Pearson, J., that he was entitled to this evidence.

CREDITORS' DEED—TIME FOR EXECUTING.

The only remaining case in the Chancery Division is that of *Re Meredith, Meredith v. Facey*, 29 Chy. D. 745, in which Pearson, J., determined that creditors who had failed in a contest which they raised claiming priority over a creditors' deed, could not afterwards be allowed to execute and take the benefit of the deed.

REPORTS.

CANADA.

ASSESSMENT CASES.

CANADIAN PACIFIC RAILWAY COMPANY V. HARRISTON.

Assessment Act s. 26—Land of railway company—How to be assessed.

[Guelph, July, 1885.]

The assessment of the railway company's property in Harriston was as follows:—Station and outbuildings, \$1,500; land occupied by roadway and station, eight and a-half acres, \$1,200. The land occupied was part of two farm lots within the municipality assessed at \$32 and \$22 per acre respectively, being a strip bounding on the south the said lots and next to an unopened road allowance which was assessed at \$137 per acre. South of the road allowance the next original farm lot was laid out into quarter acre town lots assessed at \$100 per lot.

The evidence showed that there were no buildings on the farm lots in question of any value, and that some four acres of said lots leased by the railway until 1884 had been surrendered to the owner in 1885. These four acres up to 1884 were