

GENERAL CORRESPONDENCE—REVIEW.

Registry Act—Affidavit of execution not on some part of instrument itself—Whether necessary.

TO THE EDITORS OF THE U. C. LAW JOURNAL.

GENTLEMEN,—The Registrar of this county refuses to receive for registration any instrument the affidavit of execution of which is written on the *last* sheet, provided there is *no portion of the instrument itself* written thereon. He contends that such is not "*made on the said instrument*;" that in some instruments there are as many as three unwritten sheets, any one of which *might* be detached from their fastenings without touching the instrument. Is he right in this view of the matter?

Yours truly,

Goderich.

A SUBSCRIBER.

[The matter admits of argument, but we at present think that the affidavit is by the act required to be on some part of the instrument itself, and that annexing an affidavit does not seem to be sufficient under the wording of the act.—Eds. L. J.]

REVIEW.

THE REGISTRY ACT OF 1865, (29 Vic. chap. 24), with NOTES and APPENDIX, by SAMUEL GEORGE WOOD, LL.B., of Osgoode Hall, Barrister-at-Law: Toronto, W. C. Chewett & Co., 1866.

We are in receipt of a copy of a most useful little book under the above title.

It commences with a preface "comprising a sketch of the history of the Registry Laws of Upper Canada, and some remarks upon the operation of the new Act," which bring us down to the present time, from the first Registry Act of 35 Geo. III., cap. 5. This is followed by an index of cases and of Statutes referred to in the notes. We then have the Act of 1865, with notes of decided cases on the subject in hand, and other matters of interest tending to elucidate doubtful points under the Act. These notes appear to be carefully prepared, and exhaust the cases which have been decided in this country on the subject of the Registry Acts, besides containing references to several English and Irish decisions. We give the following, being a note to section 64, as an example of the style.

"Registration is not notice under the Registry Acts of England and Ireland, nor was it in Upper Canada prior to Statute 13 & 14 Vic. cap. 63, sec. 3. (See *Street v. Commercial Bank*, 1 Grant, 169.)

"Registration is notice of the thing registered for the purpose of giving effect to any equity accruing from it, but it can be notice of any given

instrument only to those who are reasonably led by the nature of the transaction in which they are engaged to examine the register with respect to it. *Boucher v. Smith*, 9 Grant 347.

"While the act declares that registration shall be notice, it does not provide that notice of an unregistered conveyance shall not affect a registered conveyance or judgment; and we must take it that the Legislature had knowledge of the doctrine of a Court of Equity on this head; and indeed they appear to have had it expressly under consideration, when they declared that registration should be notice. Per Vankoughnet, C., in *Bank of Montreal v. Baker*, 9 Grant 298.

"Registration of an instrument not required to be registered, does not create notice. (*Doc d. Kingston Building Society v. Rainsford*, 10 U. C. Q. B. 236; *Malcolm v. Charlesworth*, 1 Keen 63.)" and again the following, which is the note to section 66:

"This section will produce an important change with respect to the rights and privileges of equitable mortgagees, whose rights, as heretofore recognized in the Court of Chancery, were specially preserved by the late Act; under which, in a case where a mortgage had been created by deposit of title deeds, and the borrower had signed a memorandum stating the sum loaned and times for re-payment, and agreeing to execute a writing to enable the lender to transfer or control the mortgages so deposited, it was held that the memorandum did not require registration to secure its priority over a subsequently registered incumbrance. See *Harrison v. Armour*, 11 Grant 303, and English cases there cited.

"In *Nave v. Pennell*, 33 L. J. Chy. 19, it was held that a memorandum not under seal, accompanying a deposit by way of equitable mortgage of deeds, requires registry.

"The latter clause of this section will not interfere with the doctrine of tacking, in cases where the provisions of this act do not apply. See *Hyman v. Roots*, 10 Grant 340, and cases there cited."

In the appendix Mr. Wood gives us some very useful tables, evidently prepared with much labour and care.

1. A list of special deeds and documents of which the registration is necessary, in order to their validity, or to the priority of the rights of the parties, within the times within which registry is to be made, where the time is fixed by statute.

2. A list of documents which may be registered at the option of the parties.

3. A table of Miscellaneous Statutory Enactments relating to Registrars and Registration.

4. A Table of Fees payable to Registrars under sec. 68 of the Act. And with reference to this we may remark that it would have saved a world of trouble if the compiler of the Act had taken some such course, as that which Mr. Wood does, as a matter of more easy reference, for the purpose of showing the fees payable to Registrars—a part of the Act which is in a most unsatisfactory position at present, and which leads to innumerable petty annoyances, and even worse evils.