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No. 59.

3d Session, 3d Parliament, 19 Victoria, 1850.

BILL.

**An Act to amend the Registry Law of
Upper Canada.**

**Received and Read a first time, Wednesday, 5th
June, 1850.**

Second Reading, Monday, 17th June, 1850.

Mr. SMITH (Frontenac.)

BILL.

An Act to amend the Registry Law of Upper
Canada.

WHEREAS by an Act passed in the ninth year of Her Majesty's Reign, intituled, "*An Act to consolidate and amend the Registry Laws of that part of this Province which was formerly Upper Canada,*" provision was made for the registration of judgments entered up in any suit or action, in any Court of Record in Upper Canada, and it was therein enacted, That "every such judgment shall affect and bind all the lands, tenements and hereditaments belonging to the party against whom such judgment is rendered, from the date of the recording of the same in the County wherein such lands, tenements or hereditaments lie, in like manner as the docketting of judgments in England affects and binds lands:" And whereas at the time of the passing of the aforesaid Act, the practice of docketting judgments had been discontinued in England, and whereas doubts have in consequence been entertained as to the effect of the aforesaid provision:—Be it therefore declared and enacted,

Preamble.

9 Vict. c. 34,
cited.

That the true intent and meaning of the aforesaid provision is, that any judgment duly certified and registered as therein provided, shall affect and bind the lands, tenements and hereditaments therein specified, in like manner as a judgment of any of Her Majesty's Superior Courts at Westminster when duly docketted would have bound lands before the practice of docketting judgments had been discontinued in England.

Meaning of the
above Act
declared.

II. And be it enacted, That a judgment to be entered up against any person in any Court of Record in Upper Canada, after the 1st day of January, 1851, shall operate as a charge, so soon as a certificate of such judgment shall have been duly registered, upon all lands, tenements and hereditaments situate within the County where such certificate shall have been registered as aforesaid, of or to which such person shall at the time of entering up such judgment or at any time afterwards be seized, possessed or entitled, for any estate or interest whatever at Law or in Equity, whether in possession, reversion, remainder or expectancy, or over which such person shall at the time of entering up such judgment, or at any time afterwards have any disposing power, which he might without the assent of any other person exercise for his own benefit,

How registered judgments shall affect lands, &c.

and shall be binding against the person against whom judgment shall be so entered up, and against all persons claiming under him after such judgment, and shall also be binding as against the issue of his body, and all other persons whom he might without the assent of any other person cut off and debar from any remainder, reversion or any other interest, in or out of the said lands, tenements or hereditaments; and that every judgment-creditor shall have such and the same remedies in a Court of Equity against the hereditaments so charged by virtue of this Act or any part thereof, as he would be entitled to in case the person against whom such judgment shall have been so entered up, had power to charge the same hereditaments and had by writing under his hand agreed to charge the same with the amount of such judgment debt and interest; and all such judgments shall be claimed and taken to be valid and effectual according to the priority of registering such certificates: Provided nevertheless, that nothing herein contained shall be deemed or taken to alter or affect any doctrine of Courts of Equity whereby protection is given to purchasers for valuable consideration without notice.

Proviso.

All deeds, &c. executed after 1st January 1851, must be registered.

III. And be it enacted, That every deed or conveyance which shall be executed at any time after the 1st day of January 1851, whereby any lands, tenements or hereditaments in Upper Canada may be in any wise affected in law or equity, shall be adjudged fraudulent and void, not only against any subsequent purchaser or mortgagee for valuable consideration, but also against a subsequent judgment-creditor, unless such memorial be registered as by the said first recited act is specified before the registering of the memorial of the deed or conveyance, or the certificate of the judgment, under which such subsequent purchaser, mortgagee, or judgment-creditor respectively shall claim; and every devise made by any person who shall die after the 1st day of January, 1851, whereby any lands, tenements or hereditaments in Upper Canada shall be in any wise affected at law or in equity, shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration unless a memorial of such will be registered in the manner directed by the said first recited Act, subject nevertheless to the provisions contained in the twelfth Section thereof.

And all wills of persons dying after the said time.

Deeds, &c. to take priority according to the date of registry.

IV. And whereas the doctrine of tacking has been found to be productive of injustice, and requires correction: Be it enacted, That every deed and conveyance executed after the first day of January 1851, a memorial whereof shall be duly registered, and every judgment recovered after the date last aforesaid, a certificate whereof shall be duly registered, shall be deemed and taken as good and effectual both in law and equity according to the priority of the time of registering such memorial or

certificate; and when no memorial of such deed or conveyance shall have been duly registered, then such deeds or conveyances shall be deemed and taken to be valid and effectual, both at law and in equity according to the
 5 priority of time of execution.

And if none be registered.

V. And be it enacted, That it shall be lawful for the Chief Justices and Judges of the Court of Queen's Bench and of the Superior Court in Lower Canada and also for the Circuit Judges in that Section of the Province, to
 10 administer the affidavit or declaration in writing mentioned and referred to in the tenth section of the said first recited Act, of the due execution of any deed, conveyance or will executed or published in Lower Canada.

Who may receive affidavits under the said Act in Lower Canada.

VI. And whereas by the fourteenth section of the said Act
 15 it is enacted, That whenever any lands have been or shall be sold under Deed of Bargain and Sale, and such Deed hath been only registered or shall hereafter be recorded in the Registry Office of the County where such lands lie, the same shall be, and is hereby declared to be,
 20 as good and valid a conveyance in law as if the same had been regularly enrolled; and whereas the effect of such clause may be to render doubtful the meaning of the forty-seventh section of the Act of the Parliament of the late Province of Upper Canada, passed in the Fourth
 25 year of the Reign of his late Majesty King William the Fourth, Chaptered one, and intituled, "*An Act to amend the Law respecting Real Property, and to render the proceedings for recovering possession thereof in certain cases less difficult and expensive,*" by which it is enacted that
 30 a Deed of Bargain and Sale of Land shall not be held to require enrolment or to require registration to supply the place of enrolment for the mere purpose of rendering such Bargain and Sale a valid and effectual conveyance for passing the land thereby intended to be bargained and
 35 sold: Be it therefore enacted that the said fourteenth section of the said first mentioned Act shall be and the same is hereby repealed.

Sect. 14 of 9 V. c. 34 repealed.