

Affidavit required.

provisions of the said Act ; and that the mortgages and conveyances mentioned in the said Act and the writing or conveyance mentioned in this Act, shall be accompanied with an affidavit of the mortgagee or bargainee of such goods, sworn before a Commissioner of the Queen's Bench or Common Pleas, to the effect,—in the case of a mortgage, that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the said mortgage, that it was executed in good faith and for the express purpose of securing the payment of the money so justly due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor,—and in case of an absolute sale, that the sale is *bonâ fide* and for good consideration (setting it forth) and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor ; otherwise such mortgage or sale shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith."

## CAP. LXIII.

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

[ 10th August, 1850. ]

Preamble.

9 Vic. c. 31, cited.

**W**HEREAS 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 enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That any judgment hereafter duly certified and registered as in the said Act 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 : Provided that nothing in this section contained shall be construed as declaratory of the meaning of the said Act ; and provided also, that whenever any judgment shall have been registered before the passing of this Act, the party in whose favor the same shall have been rendered, may require the Register of any County to mark on the margin of such registry, and sign the same, registered this                      day of                      A. D. eighteen                      and such entry of registry shall have the same effect from such date as if it had been registered under this section.

Meaning of the above Act declared.

Proviso.

Proviso.

How registered judgments shall affect lands, &amp;c.

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 First day of January, one thousand eight hundred and fifty-one, 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

to which such person shall at the time of registering 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 registering 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, and shall be binding against the person against whom judgment shall be so entered up and registered, and against all persons claiming under him after such judgment and registry, 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 and registered 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.

Remedies of judgment-creditor.

Proviso as to notice.

III. And be it enacted, That after any Grant from the Crown of any lands in Upper Canada, and Deed Patent thereof issued, every deed, devise, or other conveyance which shall be executed at any time after the First day of January, one thousand eight hundred and fifty-one, whereby any lands, tenements or hereditaments in Upper Canada may be in anywise 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, who shall have registered a certificate of his judgment, unless such memorial be registered as by the said first recited act is specified before the registering of the memorial of the deed, devise or conveyance, or the certificate of the judgment, under which such subsequent purchaser, mortgagee or judgment-creditor respectively shall claim, subject nevertheless, as to devisees, to the provisions contained in the twelfth section thereof: Provided always, that nothing herein contained shall be construed to affect the rights of equitable mortgagees as now recognized in the Court of Chancery in this Province.

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

Proviso.

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, one thousand eight hundred and fifty-one, 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 in 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 priority of time of execution.

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

And if not 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 for the Circuit Judges in that section of the Province, and for the Commissioners appointed by the Superior Courts of Record in Upper Canada, for taking affidavits in Lower Canada, and they are hereby severally required to 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, or of any certificate of payment of mortgage money, executed, published or made 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 it is enacted, That when-  
ever any lands have been or shall be sold under Deed of Bargain and Sale, and such

Sec. 14 of 9 Vic. c. 34, recited.

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, 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 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 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 valid and effectual conveyance for passing the land thereby intended to be bargained and sold: Be it therefore enacted, that the said fourteenth section of the said first mentioned Act shall be and the same is hereby repealed.

The said section repealed.

Certificate of judgment may be registered.

VII. And be it enacted, That the registry, or registry of any certificate of judgment as hereinbefore mentioned, shall be deemed and taken to be a registry of such judgment for the purposes of this Act.

Registry to be deemed notice.

VIII. And be it enacted, That the registry of any deed, conveyance will or judgment under the first recited Act, or this Act, affecting any lands or tenements, shall in Equity constitute notice of such deed, conveyance will or judgment, to all persons claiming any interest in such lands or tenements subsequent to such registry.

Separate book for registry of judgments.

IX. And be it enacted, That the Register of every County in Upper Canada, shall after the passing of this Act, enter in a separate Book to be kept for that purpose, the certificates of all judgments brought to him for registration, and prepare an Alphabetical Index thereto.

#### C A P. LXIV.

An Act for correcting certain errors and omissions in the Act of the Parliament of this Province, passed in the last Session thereof, intituled, *An Act to provide, by one general law, for the erection of Municipal Corporations and the establishment of Regulations of Police in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada*, for amending certain of the provisions of the said Act, and making some further provisions for the better accomplishment of the object thereof.

[ 10th August, 1850. ]

Preamble.  
12 Vict. c. 81.

WHEREAS in the engrossment of the Act passed in the last Session of Parliament, chaptered eighty-one, and intituled, *An Act to provide, by one general law, for the erection of Municipal Corporations and the establishment of Regulations of Police in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada*, some errors were accidentally committed, and amongst them, one of the Schedules in the said Act referred to, and intended to have been annexed to the same, was wholly omitted: And whereas there are also some inaccuracies, as well in the body of the said Act as in the Schedules thereunto annexed; And whereas it is expedient as well to correct the said errors and inaccuracies as to amend the said Act in some of the provisions thereof, and to make some further provisions for the better accomplishment of the object thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the several words,