

CORRESPONDENCE

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Joint Tenancy and Absence of Registration

TO THE EDITOR:

After reading the comments on *Stonehouse v. Atty. Gen. of B.C.*¹ by Mr. Hugh R. Raney of the Saskatchewan Bar,² I feel that someone should come to the defence of the laws of British Columbia as they now are.

Subject to any objection which might be founded on the Wills Act³ the case is clearly in accord with the law of this province. Mr. Stonehouse was in no better position than a volunteer for he had as a joint tenant a right of succession to the other joint tenant only so long as the other joint tenant was pleased to allow that right to exist. It is usually considered in this province that the common law applies subject to the provisions of the Land Registry Act⁴ and this Act, although it recognizes a jointure, does not purport to register a right of succession in favour of the holder of that right. Either party can execute and register a deed to his interest at any time.

The suggestion that the deed in the *Stonehouse* case which was held unregistered could be used after delivery to prevent Mr. Stonehouse acquiring his wife's interest but could be suppressed if Mr. Stonehouse died first is true but assumes fraud which, if proven, would undoubtedly have established that the deed was intended to be testamentary in character. In such case it is unlikely that the deed was executed with the formalities required by the Wills Act. I believe it is fair to say that Mr. Stonehouse was not deprived of anything which the law gave him but rather failed to acquire something which the law would have given him had the jointure continued in existence until his wife's death. I believe a purchaser for value would have been in a very different position.

The examples quoted by Mr. Raney to establish that persons giving value take subject to equities are not entirely apt. These cases involved judgments registered under the Execution Act⁵

¹ [1962] S.C.R. 103, (1962), 37 W.W.R. 62 aff'g. (1960), 33 W.W.R. 625 (C.A.) rev'g. (1960), 33 W.W.R. 66 (B.C.).

² (1963), 41 Can. Bar Rev. 272.

³ R.S.B.C., 1960, c. 408.

⁴ R.S.B.C., 1960, c. 208.

⁵ R.S.B.C., 1960, c. 135.

and creditors in that position have been held not to be secured creditors; *re Victoria Bed and Mattress Company Limited*.⁶ A creditor only gets under execution what the debtor has to give and, therefore, takes subject to equities just as does a party issuing a garnishing order. It may be that creditors should be in a different position but because they do not give value and holders of equities invariably do, this solution cannot be said to be unjust. If the creditor relying on the register delays using his right under the Execution Act to sell the land against which his judgment is registered, he does so in ignorance of the law or he is taking a risk which he must recognize.

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⁶ (1959), 29 W.W.R. 380 (B.C.).

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