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*March 3.
*March 7.

THE NORTHWEST THRESHER }
COMPANY (DEFENDANTS) } APPELLANTS;

AND

SARAH ELIZABETH FREDERICKS }
(PLAINTIFF) } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
SASKATCHEWAN.

Homestead lands—"Land Titles Act," 6 Edw. VII. c. 24; 8 Edw. VII. c. 29 (Sask.)—*Exemption from seizure*—*Registered incumbrance*—"Exemptions Ordinance," N.W.T., Con. Ord., 1898, c. 27.

Homestead lands, exempt from seizure under execution by the North-West Territories "Exemptions Ordinance," are not affected by any charge or incumbrance in consequence of the registration of writs of execution against the homesteader under the provisions of the "Land Titles Act" of the Province of Saskatchewan, 6 Edw. VII. ch. 24, sec. 129, as amended by 8 Edw. VII. ch. 29, sec. 10; consequently, the transferee of such lands under conveyance from such homesteader acquires them free and clear of any incumbrance resulting from the registration of such execution. Judgment appealed from (3 Sask. L.R. 280) affirmed.

APPEAL *per saltum* from the judgment of Newlands J., in the Supreme Court of Saskatchewan(1), maintaining the plaintiff's action with costs.

The appellants recovered judgment against one Fredericks, who was the owner of homestead lands, exempted from seizure under execution by the North-West Territories "Exemptions Ordinance" (Con. Ord.,

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

(1) 3 Sask. L.R. 280.

1898, ch. 27, sec. 2, sub-sec. 9), and caused a writ of execution against the lands of their judgment debtor to be registered in the Land Titles Office under the provisions of the "Land Titles Act" of Saskatchewan, 6 Edw. VII. ch. 24, sec. 129, as amended by 8 Edw. VII. ch. 29, sec. 10. Subsequently, Fredericks transferred his homestead lands to his wife, the respondent, and, upon issuing the certificate of title to her, the registrar indorsed thereon a memorandum that the title to the lands was subject to a charge or incumbrance in consequence of such registered execution. The respondent, thereupon, brought the action for a declaration that the execution did not constitute any charge or incumbrance upon the lands in question and for an order that the indorsement so made by the registrar should be removed from her certificate of title. At the trial, Mr. Justice Newlands maintained the plaintiff's action, and held that the writ of execution did not charge lands exempted from seizure, that the transferee acquired the lands free from any charge thereon in consequence of the registration of the writ of execution, and directed the registrar to remove the memorandum of incumbrance from her certificate of title. The defendants obtained leave, by order of the registrar of the Supreme Court of Canada, sitting as judge in chambers, to appeal direct from the judgment of the trial judge.

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Mackenzie K.C. for the appellants.

George F. Macdonell, for the respondent, was not called upon for any argument.

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—
Idington J.

The judgment of the court was delivered by

IDINGTON J.—The exemption, by law, of the lands here in question freed them, and was intended to free them, from the operation of any writ of execution against the lands of the appellants' debtor. The debtor was, therefore, entitled to dispose of them as he saw fit. Hence the respondent was entitled to receive a conveyance thereof from the debtor as free from the operation of such writs of execution as he was to hold them. It follows that she became entitled to have the certificate of title cleared from any such apparent charge.

We are, therefore, under no necessity of passing upon the other questions raised by the appellants' counsel.

The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Mackenzie, Brown & Co.*

Solicitors for the respondent: *Black & Hilliar.*
