

*Held*, 1. Where the party brought into the Master's office under notice provided for by Rule 117, Queen's Bench Act, 1895, takes no steps to have the decree varied or set aside, he cannot afterwards object to the plaintiff's right to a decree of foreclosure.

2. Where the plaintiff has served a party with such notice to come in and prove his claim as a subsequent incumbrancer, he cannot afterwards raise an objection that the party so served has no lien on the land.

3. A mortgagee in bringing his accounts into the Master's office should charge himself with the net proceeds only of any rents or profits received by him out of the mortgaged premises, leaving the incumbrancer to surcharge if he considers the mortgagor entitled to a larger credit.

4. Where, in the negotiations for a loan to be secured by mortgage, the mortgagee stipulates for a bonus or special commission or other charge in consideration of advancing the money, in addition to the interest, he may retain it if he deducts the amount at the time from the loan and only advances the balance, or in case the amount is afterwards paid and settled: *Potter v. Edwards*, 26 L.J. Ch. 468; *Mainland v. Upjohn*, 41 Ch. D. 126. But otherwise such bonus or special advantage cannot be recovered or allowed in equity: *James v. Kerr*, 40 Ch. D. 524; *Eyre v. Hynn-McKenzie* (1894), 1 Ch. 218, and *Field v. Hopkins*, 44 Ch. D. 524.

5. Where the mortgagee in his account has charged himself with the gross proceeds of crops raised on the mortgaged premises, he is entitled to deduct from that the expenses of raising and marketing.

*Howell*, Q. C., and *D. A. Macdonald* for plaintiff. *Culver*, Q. C., for the incumbrancer.

Dubuc, J.]

CASE *v.* BARTIETT.

[March 11.

*Registry Act, R.S.M., c. 135, s. 68—Judgment, registration of—Priority of unregistered instrument—Judgments Act, R.S.M., c. 80, s. 5.*

Section 68 of the Registry Act, R.S.M., c. 135, provides that priority of registration shall in all cases prevail, unless before such prior registration there shall have been actual notice of the prior instrument to the party claiming under the prior registration; and section 5 of the Judgments Act, R.S.M., c. 80, enacts that a certificate of judgment duly registered shall bind all interest or estate of the defendant in land situated within the district, the same as though the defendant had in writing under his hand and seal charged the land with the amount of the judgment.

*Held*, that notwithstanding these provisions a registered judgment creditor cannot claim priority over the grantee of an unregistered conveyance previously executed and delivered by the judgment debtor. *Wickham v. The New Brunswick Ry. Co.* L.R. 1 P.C. 64; *Whitworth v. Gaugain*, 3 Hare 415; *Eyre v. MacDowell*, 9 H.L. 618, followed. *Miller v. Duggan*, 21 S.C.R. 47, and *Shark v. Stevenson*, 7 M.R. 381, distinguished. *McMaster v. Phipp*, 5 Gr. 253, not followed.

*Mulock*, Q. C., for plaintiff. *Howell*, Q. C., and *Mathers* for defendant.