

[Chan.]

NOTES OF CASES.

[Chan.]

agreement." The Court directed that the vendor pay off the mortgage within a limited time, or in default that the purchaser should be at liberty to do so, procure an assignment and have his remedy against the vendor, whose conveyance he was not bound to accept till this mortgage was paid off; the purchase money in Court to be applied *pro tanto* thereto.

Held, also, that as the matter had been referred to the Master by the decree which was for specific performance, it should have been disposed of in his office under G. O. 226.

Foster, for plaintiff.

H. P. Sheppard, for defendant.

Boyd C.]

June 25.

FOSTER V. MORDEN.

Mortgage—Account.

The plaintiff, carrying on the business of a druggist, mortgaged his stock-in-trade to the defendant, the instrument by which it was effected stipulating that the defendant should take possession of the stock and premises, to hold for four months in order to secure repayment of money advanced, and power was given to the mortgagee to add new stock so as to keep up the business. Default was made in payment, and thereafter a large amount of stock was added, some of the money being expended by the defendant with the assent of the plaintiff, other money being part of the profits of the business which were thus re-invested in new stock; some of the old stock remaining in specie. The matter was referred to the Master at Belleville to take the accounts of the dealings between the parties. Before the Master made his report the plaintiff applied on petition for the appointment of a Receiver, on the ground that the mortgagee had been paid in full.

Held (1), that as the new stock belonged to the mortgagee himself, and the plaintiff could therefore have no claim upon it, and as the Master had not yet found which party was indebted to the other, his finding would not be anticipated by the appointment of a Receiver. (2.) That although the defendant's right on default was to sell the original stock *en bloc* after notice, still the defendant was at liberty to add further capital and stock to the business, but not to the prejudice of the mortgagor so as to

improve him out of his estate; and so long as the plaintiff chose to allow the business to go on under the defendant's control he had the right so to conduct it, subject to being called on to account.

Arnoldi, for plaintiff.

A. Hoskin, Q.C., for defendant.

Ferguson, V. C.]

[June 30.]

THOMSON V. VICTORIA MUTUAL FIRE
INSURANCE COMPANY.

Pleading—Demurrer—Party suing on behalf of a class.

Where a right of suit exists in a body of persons too numerous to be all made parties, the Court will permit one or more of them to sue on behalf of all, subject to the restriction that the relief prayed is one in which the parties whom the plaintiff professes to represent have all of them an interest identical with that of the plaintiff. Therefore, where a mutual insurance company had established three distinct branches, in one of which, the water-works branch, the plaintiff insured, giving his promissory note or undertaking to pay \$168, and the company made an assessment on all notes and threatened suit in the Division Court for payment of such assessment; whereupon the plaintiff filed a bill "on behalf of him self and the other policy holders associated with him as hereinafter mentioned," alleging the company was about to sue him and the other policy holders in said branch, that large losses had occurred in the company prior to the time of his effecting his insurance, and insisting that he could be properly assessed only in respect of such as had arisen since he entered the company, and praying that the necessary inquiries might be made and accounts taken, alleging that the Division Courts had not the machinery necessary for that purpose,

Held, that according to the statements of the bill, the policy-holders in the water-works branch were not represented in the suit, and a demurrer on that ground filed by the company was allowed with costs.

W. Cassels and J. R. Roaf, for plaintiff.

Moss, for defendant.