*E. Fitzgerald* now moved for the appointment of a Receiver. The purchase money was advanced on the joint account for the purchase of lands. Since the decree, it was arranged between the parties, that the property should be divided and a special lot reserved to pay the partnership debts and costs of the suit. The Defendant had not carried out this; and now refuses to pay any portion of the rents towards liquidating the debts; and he is not worth anything except this property—the Plaintiff having advanced the capital of the partnership and the greater portion of the purchase money for these lands.

*Brough, Q. C.*, contra. There was nothing to show that these lands were bought for the partnership; the Defendant had bought them for himself, and if they were found to be partnership property, they must be sold and their proceeds divided.

ESTEN, V. C., delivered the judgment of the Court. A Receiver can only be appointed for the rents and profits of lands, and not for any other purpose. I think the Plaintiff should prosecute the decree to determine whether this is partnership property or not; for the Court cannot appoint a Receiver unless it is found so, and this cannot be known until the Master reports. It would be little use to appoint a Receiver, for the decree should particularize who should pay him. When the decree determines the partnership property, it is usual to appoint a Receiver as a matter of course. But in this case, the Defendant has from first to last denied,—and with great pertinacity,—that these are partnership lands. I therefore think that inasmuch as there is a reference to the Master to ascertain what is partnership property, it would be inadvisable to grant a Receiver in the present state of the cause.

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ROBERTS v. REES.

*Mortgage—Duty of purchaser as to Vendor's Mortgage.*

The purchaser of an estate subject to his vendor's Mortgage, is bound to indemnify the vendor against such mortgage debt. (Nov. 9th, 1858.)

In this case the bill was filed to compel a purchaser to pay the amount of a mortgage made by his vendor to the original owners. The plaintiff had purchased certain lots in 1852, and had given a mortgage for the balance of the purchase money; shortly afterwards he sold the lots to the defendant, who was aware of the existence of such mortgage. Default having been made in payment of the mortgage, the mortgagees sued their mortgagor (the plaintiff) at law, for the amount, and obtained judgment. The plaintiff immediately on service of the summons, filed his bill against the defendant (the purchaser) to compel him to indemnify him against the mortgage.

*Hodgins* moved that a decree be now made, in accordance with the prayer of the bill, on the ground that every purchaser of an estate in mortgage is bound to indemnify the vendor against the mortgage debt (*Waring* v. *Ward*, 7 Ves. 337).

*Hurd* for defendant.

ESTEN, V. C.—Delivered the judgment of the court. This application is not of frequent occurrence in this country, though more general in England, and according to the law there, the plaintiff is entitled to the decree as asked for. The same rule applies here; and the decree therefore, will be that the defendant do pay the amount of the mortgage, together with the costs at law, and of this application.

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VANSICKLER v. PETTIT.

*Legal Mortgage—Foreclosure—Registry Laws—Duty of subsequent Mortgagees.*

A Mortgagee whose mortgage was made before the Registry laws required registration to insure priority, filed his bill to foreclose. The mortgage had not been registered.

*Held*, that subsequent mortgagees were bound to redeem him, his application being to fix a time for them to redeem: and that purchase for valuable consideration without notice could not be pleaded against him. (29th January, 1859.)

In this case the bill was filed by a first legal mortgagee to foreclose, under the following circumstances: The Plaintiff, in 1849, conveyed certain property to his son, *Robert Vansickler*, who mortgaged back. In 1857, *Robert* sold to the Defendant *Pettit*, who mortgaged back, and which mortgage *Robert* assigned to one *Paxton*. The mortgage to the Plaintiff was not registered under circumstances which prevented the operation of the Registry laws. The plaintiff now filed his bill to foreclose and the Defendant pleaded purchase *bona fide* for value without notice.

*Roaf* for Plaintiff.

*A. Crooks* for Defendant.

THE CHANCELLOR.—The position of a first legal mortgagee is impregnable in both law and equity, and he has a right to call upon subsequent mortgagees to redeem him. He files his bill not for foreclosure, but as an invitation to the subsequent mortgagees to redeem, and comes to the Court to ask that a time may be fixed for them to exercise this right. Where there are several mortgagees without notice of the first legal mortgage, the plea of purchase without notice is not a denial of their duty to redeem.—The case of *Collier v. Fitch* governs the present case. The defence therefore of purchase for valuable consideration is inapplicable.

ESTEN, V. C., concurred.

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(CHAMBERS.)

TOWN OF PETERBOROUGH v. CONGER.

*Practice—Service of Bill on a Solicitor—Order pro confesso.*

The rule requiring notice of motion to take a Bill *pro confesso*, after service on defendant's solicitor, cannot be dispensed with, although such solicitor consents to waive such notice.

This was a motion to take a Bill *pro confesso* against the Defendant. Service had been accepted by his solicitor in the usual way, and a consent added, that if no answer was put in within 28 days, application might be made to take the bill *pro confesso*.

*O'Brien* now moved in accordance with the above. No further notice had been given to the solicitor.

SPRAGGE, V. C.—The practice is to give notice in all cases where the service is not personal. Where the service is personal no notice is required. But it is a matter of practice, and it is proper that the practice should be uniform. And if this was a case not requiring notice, the order could not go without reference to the other members of the Court.

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THOMPSON v. WARD.

*Practice—Depositions to be used in the Courts.*

The usual practice in applications to allow depositions and evidence taken in this Court, to be used in other Courts, is to send an Officer of the Court there with the papers.

This was an application to allow the depositions and evidence taken in this cause to be sent to the Clerk of Assize at Toronto, to be produced on a trial now pending in the Court of Queen's Bench. An affidavit was put in as to the necessity of having the papers at the trial. No notice of motion had been given, but the defendant's solicitor being in court at the time consented to their being used without prejudice or abatement in any other proceedings.

SPRAGGE, V. C.—The practice in all such cases is so give notice of the motion, but as the defendant's solicitor is present and has consented to the motion, the papers may go. The usual course, and which must be adopted in this case, is to send down an officer of the Court with the papers, who retains possession of them for the Court, but allows them to be used in the suit.

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GALBRAITH v. GALBRAITH.

*Practice—Notice of Motion—Guardian ad litem.*

Where the mother of the infants is Plaintiff and the infants Defendants, notice of motion to appoint a guardian *ad litem*, must also be served upon them if of proper age.

In this case the bill was filed by the mother of certain infants, in which they were made defendants. Notice of motion on behalf of Mrs. *Galbraith*, as Plaintiff, was served upon herself as mother of the infants as required by the orders of Court.

*Cattanach* now moved in accordance with the notice of motion, and read affidavits of the respective ages of the infants.

SPRAGGE, V. C.—I see the orders have been strictly followed in