the circumstances, because by assenting he would forego a fair advantage of his position. The affidavits filed on his behalf state only that he is assignee of a subsequent mortgage, upon which it is not stated that any proceedings at law or equity had been taken.

To put out of view for a moment the subsequent mortgage, Robinson objects that he was not bound, upon payment of the Ketchums' judgment, to assign it; and in support of his objection the rule is cited, that a mortgagee is bound only to convey the mortgage premises, not to assign the mortgage debt. This is established, as between mortgagee and mortgagor, in *Dunstan* v *Patterson* (2 Pinll. 345), and *Smith* v. *Green* (1 Coll 562); and the rule may also apply as between prior and subsequent mortgagees, but the ordinary form of decree, upon a judgment creditor being redeemed by a subsequent incumbrancer, is, that he assign the judgment to the party redeeming him: and the succeeding directions show that the right to receive the mortgage or judgment debt paid, passes to the subsequent incumbrancer, who pays it.

Then, is the registered judgment creditor justified in refusing to receive payment of the judgment debt and to assign the judgment? *Smith* v *Green* was the case of a first mortgagee, to whom notice was given by a second mortgagee of his intention to pay off the mortgage at the usual period, six months. Before the expiration of the time, the first mortgagee filed his bill to foreclose; and the second mortgagee, just before the expiry of the six months, tendered to the first mortgagee his mortgage money, with costs incurred up to that date. This was refused, and the foreclosure suit proceeded with. Sir J. L. Knight Bruce intimated as his opinion, that a prior mortgagee ought, without suit, to receive his mortgage money from one entitled to redeem him. His language is: "To say that a first mortgagee ought not, without a judicial proceeding, to accept payment from a second mortgagee, and thereupon to convey to him the mortgaged estate, with or without the concurrence of the mortgagor, when the second mortgagee does not desire the mortgagor's concurrence, is too much." And he deprived the first mortgagee of his costs, incurred after tender of his mortgage money.

If a first mortgagee ought, without suit, to receive his mortgage money, and convey the mortgaged estate to a second mortgagee, redeeming him, so a prior judgment creditor ought, without suit to redeem him, to receive his judgment debt, when offered by a subsequent incumbrancer, and to assign to him his judgment. Vice-Chancellor Knight Bruce thought the taking of proceedings to recover his mortgage debt inequitable after such tender; and it cannot be doubted that if the first mortgagee could have taken, and were taking, proceedings that would put the mortgaged estate beyond the reach of the subsequent incumbrancer to redeem it, he would have restrained such proceedings, as was done by Sir John Romelly in *Rhodes* v. *Buckland* (13 Beav. 212).

A refusal by a judgment creditor, pressing a sale of his debtor's lands to satisfy his debt, to receive payment and assign his judgment to a subsequent judgment creditor, would appear simply unreasonable and vexatious. As soon as he registered his judgment, and another creditor registered a judgment after him, the right of the latter was to redeem the former—a right clearly enforceable in equity; and an offer to redeem refused, would, I have no doubt, be at the peril of costs, and the court would see that the right to redeem was preserved to the incumbrancer making the offer. A refusal by a judgment creditor to be redeemed would indeed be almost unaccountable, unless redemption would in some way operate to his prejudice. It remains to consider whether the reason offered on behalf of Robinson for his refusal in this case is a sufficient one. The rights of the parties are clear, according to their priorities: the Bank to redeem Robinson in respect of Ketchums' judgment, and Robinson, if he desires it, to redeem the Bank as subsequent incumbrancer under the subsequent mortgage assigned to him. Then, does this interfere unfairly with any legal right of Robinson? The land cannot be sold by the sheriff to satisfy this subsequent mortgage; but if the Bank pay off the Ketchum judgment, not getting an assignment of the debt, a prior incumbrance will be removed at the expense of the Bank, and the subsequent mortgage will be relieved of so much of prior incumbrance. This would be an undoubted advantage; but is it a just one? If Robinson desires to use his legal process to force the Bank into such a payment, I think such use of it would be inequitable. I see nothing in the circumstance of Robinson being assignee of a subsequent mortgage, to alter his position from what it would be if he were only first incumbrancer sought to be redeemed by a second incumbrancer. I may possibly be under a misapprehension as to some of the facts, for the counsel for Robinson did not seem to expect that the argument could be proceeded with when it was. I have intimated what view I should probably take of the matter, if Robinson held a judgment subsequent to the plaintiff's, which might be satisfied at the Sheriff's sale: but finding upon the affidavits a subsequent mortgage stated, with, so far as appears, no proceedings taken to enforce it. I have taken such to be the facts, and my judgment proceeds upon such being the position of the parties. The order will be, that upon payment to Robinson, if he will receive it, and assign the Ketchum judgment, of the amount of that judgment and subsequent costs, or if not, then, upon payment into court of the same amount, an injunction should go to restrain the sale of Moore's lands in the county in which the plaintiff's judgment is registered, in satisfaction of the Ketchum judgment.

PATERSON v. HOLLAND.

Reported by A GRANT Esq., *Barrister-at-Law.*

Practice—Re-hearing—Adding parties in Master's office.

Defendants presented their petition for a second re-hearing on the ground that certain persons, necessary parties, were not before the court but as two opportunities of making the objection had been disregarded and the interests of the parties complaining of the omission would be properly protected by making them parties in the master's office, the petition was refused.

The proper practice is to bring all necessary parties before the court, at the hearing, and not to add them in the master's office.

A Crooks, for some of the defendants in this suit, moved upon petition for an order to re hear this cause a second time, on the ground that one Kneeshaw, or his representatives, had not been made parties to the suit.

Hector and *Blake*, for the other defendants.

McDonald and *Strong*, for plaintiffs, *contra.*

ESTEN, V. C.—This is a petition for a second re-hearing. The ground stated in it is that certain persons, necessary parties, were not before the court at the original hearing. These persons, however, with the exception of Kneeshaw, or his representatives, were then out of the jurisdiction, and therefore their absence was not properly matter of objection, and the court made such a decree as it could properly make in the absence of those parties. Is then the fact of Kneeshaw, or his representatives, who were within the jurisdiction, not having been before the court at the original hearing, a sufficient reason for allowing a second re-hearing, and undoing all that has been effected under the decree, when two opportunities of making this objection have been disregarded, and all the ends of justice can be secured as regards the parties in the master's office? I think not; but at the same time I think that all necessary parties should be brought before the court at the hearing, and I am opposed to the introduction of any practice of adding such parties for the first time in the master's office, merely to remedy defects arising from the carelessness and negligence of the plaintiffs in the suit.

SUPERIOR COURTS.

MONTREAL DISTRICT.

(From the "Lower Canada Jurist.")

ROLLAND v. BRISTOW.

City Councillor—Montreal—Disqualifications.

Held—Under 12 Vic., cap 129, ss 8 & 41, 10, That a party elected to be councillor in the corporation of the City of Montreal not being possessed to his own use and benefit of real and personal estate within the City of Montreal after payment of his just debts, of the value of £500 cy., is not qualified to be so elected.

2nd That a party elected to be such a councillor and becoming insolvent during his occupancy of said office, is by such insolvency disqualified to hold such office.

20th February, 1860.

The petitioner in this matter by his petition or *requête libellée*, set out his qualification as a voter of the St. Lawrence ward in