have objected to the deposit as insufficient when the precipe order for sale was obtained.

[Mr. Stephens, Oct. 19.—Proudfoot, V. C., Dec. 2.

In this case Molson's Bank, a subsequent incumbrancer, had demanded a sale under G. O. 456 and had deposited $80 in court. The costs of the sale, which proved abortive, were taxed at $165.

Arnoldi applied for an order on the Bank to pay the difference between the amount of the deposit and the taxed costs. He urged that in equity the Bank ought to pay the deficiency, and referred to the analogy of payment of $40 deposit for rehearing and the bond for $400 as security in case of appeal (R. S. O. c. 38, sec. 26); in each of these cases the appellant paid the whole amount of costs without regard to the deposit or penalty. The General Orders do not fix the deposit at $80. The schedule endorsement for the bill shows the intention of the deposit to be to cover all costs of a sale. The order was *ex parte*. In England the deposit is settled in the presence of both parties, hence this application cannot arise there, and the English cases show it must be sufficient to cover all costs: *Bellamy* v. *Cockle*, 18 Jur. 465; *Whitfield* v. *Roberts*, 5 Jur. N. S. 113; Dan. 4 Ed. 1167. The granting a sale at all in a foreclosure case is an indulgence and the party must pay for it. He also referred to *Goodall* v. *Burrows*, 7 Gr. 449; *Taylor* v. *Walker*, 8 Chy. 506, Chy. Orders 429, 456.

Hoyles, contra, urged there was no equity in the case, and that although there were no reported cases on the subject, yet the contrary practice had long been established. At any rate the application is too late, plaintiffs having acquiesced in the order. Had a larger deposit been demanded the Molson's Bank might not have been willing to go to such expense. The case of *Corsellis* v. *Patman*, L. R. 4 Eq. 156, shows that no order can be made such as asked.

The Referee dismissed the application on the ground that the order had been acquiesced in by the plaintiffs, and that there was no equity to compel the defendants to pay more than they had been required to pay under the General Orders, and the practice of the court thereunder, after al the expenses had been incurred, and when it was too late to determine whether they would be willing to incur the additional liability or not.

Application dismissed.

On appeal, Proudfoot, V. C., held: It was not possible to read the orders of the Court in such a way as to justify the order applied for, though he regretted that such was the case. Under G. O. 429 the deposit is to be "a reasonable sum fixed by the court," and "the necessary deposit" under G. O. 456 must refer to such reasonable sum, but neither order determined the amount of the deposit. But Sched. S, required to be endorsed on the bill under G. O. 456, contains a notice to the defendants, that if they desire a sale they are to deposit a sum of $80 to meet the expenses of such sale. He continued:—"That is the only place where the amount appears. The proper defendants to such a bill are the owners of the equity of redemption, and this notice therefore is intended for, and according to the practice need only reach, them, for the notice T, to be served upon subsequent incumbrancers, made parties in the M.O., contains no mention of any deposit. When a subsequent incumbrancer, therefore, desires to obtain a sale and makes a deposit for the purpose, he must run the risk of paying in enough; for if he does not pay in a sufficient sum, reasonable in the opinion of the court or a judge, I have no doubt that the order for a sale obtained upon *præcipe* would be discharged. Whether the same could be varied in the case of a sale desired by an owner of the equity of redemption, or whether he would be liable for the additional expenses, I need not now inquire, for this is the case of a subsequent incumbrancer, and there are considerations applying to the owner that do not apply to the subsequent incumbrancer. Nor need I inquire whether the language in the endorsement, "to meet the expenses of such sale," could be construed so as to imply an undertaking to pay what was necessary to meet such expenses beyond the $80, for I do not think that notice applies to a subsequent incumbrancer. And when the plaintiff was content to allow the sale to go on with the deposit of only $80, it would not be fair to the defendants to im-