

the trial. The witness is the step-daughter of the plaintiff. At present engaged as a trained nurse in attendance on a patient. She cannot be expected to give this up and break her engagement to expedite the trial. She is clearly not in any way under the defendant's control.

The order will issue as above with costs in the cause. See *Maclean v. James Bay Railway Co.*, 5 O. W. R. 495.

MASTER-IN-CHAMBERS.

MAY 23RD, 1913.

RE FERGUSON AND HILL—PURSE v. FERGUSON.

4 O. W. N. 1339.

Mortgage—Power of Sale—Surplus Proceeds—Payment into Court by Mortgagee—Application by Execution Creditor for Payment out—Payment to Sheriff—Costs.

MASTER-IN-CHAMBERS, *held*, that the balance of the proceeds of a sale under the power of sale in a mortgage, paid into Court by the mortgagee, should not be paid out to an execution creditor, but should be paid to the sheriff to be applied by him as the Creditors' Relief Act directs.

Campbell v. Croil, 8 O. W. R. 67, followed.

Motion by an execution creditor for payment out of Court of certain moneys paid in by a mortgagee, being the balance of the proceeds of a sale under a power of sale in the mortgage.

R. E. Segsworth, for Purse, the applicant.

A. E. Knox, for the Home Bank.

CARTWRIGHT, K.C., MASTER-IN-CHAMBERS:—Hill, the mortgagee, sold under the power of sale in a mortgage from Ferguson, and on 18th April, the surplus, after such sale was paid into Court, being \$550.38.

There are certain execution creditors of the mortgagor one of whom has executed against the mortgagor alone, and there are three other executions in the sheriff's hands, one against the mortgagor and his wife, and the other two against them and another party.

One of these execution creditors has moved to have this money paid out to them, as their rights may appear. This, I think, cannot be done. An order must go as in *Campbell v. Croil*, 8 O. W. R. 67, for payment to sheriff of Toronto,