

had not been any cross-examination on the affidavit in support of the motion. The Master said that the motion was entitled to prevail—leaving the plaintiff Johnson to proceed as pointed out in *Whitehead v. Hughes*, 2 Cr. & M. 318, and in the very recent case of *Seal & Edgelow v. Kingston*, [1908] A.C. 579. As the Widell Co. was a foreign corporation, there might be some difficulty in carrying the suit to a successful or any conclusion, if that company was unwilling to assist, by accepting indemnity or otherwise. This, however, could be left for the consideration of the plaintiff Johnson. On the existing material, the order should go as asked staying the action until the consent of the Widell Co. is obtained. If this is not given, the plaintiff Johnson must take such steps as he may be advised to enforce this alleged claim of the partnership. Costs of the motion to the defendants in any event. R. McKay, K.C., for the defendants. G. S. Hodgson, for the plaintiffs.

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RE FERGUSON AND HILL —PURSE V. FERGUSON—MASTER IN CHAMBERS—MAY 23.

*Execution—Moneys in Court—Surplus Proceeds of Mortgage Sale—Execution Creditors of Mortgagor—Payment out to Sheriff—Creditors' Relief Act.*]—Hill, a mortgagor, sold the mortgaged land under the power of sale in his mortgage from Ferguson; and, on the 18th April, the surplus proceeds of the sale were paid into Court, being \$550.38. There were certain execution creditors of the mortgagor; one of them had in the Sheriff's hands execution against the mortgagor alone; two had executions against the mortgagor and his wife; and two had executions against the mortgagor and his wife and another. One of these execution creditors, Purse, moved to have the money in Court paid out to the execution creditors as their rights should appear. The Master said that this could not be done. An order must go as in *Campbell v. Croil*, 8 O.W.R. 67, for payment out to the Sheriff of Toronto; the money paid out to be deemed to be money levied under executions against the Fergusons, and to be dealt with by the Sheriff as the Creditors' Relief Act directs. As this motion was necessary, the costs of the applicant and of those appearing on the motion might be added to their claims. R. F. Segsworth, for the applicant. A. E. Knox, for the Home Bank of Canada.