

ELLIOTT v. BYERS—FALCONBRIDGE, C.J.K.B., IN CHAMBERS—
JULY 21.

Mortgage—Foreclosure—Subsequent Incumbrancer Added as Party in Master's Office—Attack upon Judgment and Report—Locus Standi—Regularity of Proceedings.]—Motion by S. Cleland, an execution creditor, made a party in the Master's office, to set aside the judgment and report in a mortgage action. FALCONBRIDGE, C.J.K.B., in a written judgment, said that he listened to Cleland's solicitor discourse for an hour or more before he learned the following facts, stated by counsel for the plaintiff, and not denied at the time, although an affidavit (apparently not filed) appeared to have slipped in among the papers in which there was some slight attempted modification of the plaintiff's counsel's statement. The action was for foreclosure. The plaintiff, no appearance having been entered by the defendant, was proceeding in the Master's office, when Cleland was made a party. It was evident that the solicitors for the plaintiff and Cleland considered the latter's claim as negligible, for Cleland's solicitor agreed to procure a release from him for \$10. On procuring this, he demanded \$15. The plaintiff's solicitor refused to be "held up," as he called it, for the extra \$5. Hence this motion, which was therefore all about \$5. In the circumstances, Cleland had no locus standi to attack these proceedings. If he had, some of the objections were not in accordance with the facts, and the others were not tenable. Motion dismissed with costs. T. Hislop, for the applicant. A. M. Dewar, for the plaintiff.