

## EQUITY AND FORECLOSURE.

The case of *Greisman v. Rozenberg*, 13 O.W.N. 382, seems to us a curious illustration of the way in which what is supposed to be equity is sometimes administered. The facts were simple. The plaintiff instituted an action for foreclosure, there being at the time an execution against the lands of the mortgagor in the hands of the sheriff affecting the mortgaged land. The plaintiff proceeded with his action without making the execution creditor a party and obtained a final order of foreclosure against the mortgagor. The execution creditor then applied to set aside the final order and, strange to say, the application was granted. The final order in no way affected the applicant, as it only foreclosed the parties to the action. There was no obstacle to the sheriff proceeding to sell the equity of redemption in due course as it existed at the time the writ was placed in the sheriff's hands, nor was there any obstacle to the applicant instituting an action for redemption; but what *locus standi* he had in law or equity to set aside the final order is not very apparent. Rule 217, which provides for the setting aside of *ex parte* orders, is limited in its operation to parties affected by the order sought to be set aside; here the applicant was not "affected" by the order and yet his application was entertained. Lord Justice Bowen once declared that a suit is not like an omnibus which anyone may hail from the pavement and get in at his pleasure. Here, according to this decision, the stranger may hail the suit, and the Court obligingly stops it and opens the door.

The well settled principle used to be that a plaintiff is *dominus litis*. A defendant, or the Court itself, may very well say the proper parties are not before the Court to enable the Court to adjudicate, and in such cases the Court may require the plaintiff to bring the proper parties before it, or in default of his so doing may dismiss his action; but as for adding parties against his will or allowing persons not parties to step in and dictate to the plaintiff how he shall conduct his suit seems a very strange and unwarranted departure from well settled principles. It cannot be said that the final order in the case referred to was a nullity.