The surplus, therefore, falls to the first execution creditor, to the extent of his charge, and it is to him, as it seems to me, that the mortgagees are bound first to account.

The case of *McKay* v. *Mitchell*, 6 L. J. U. C. 61, is at first sight startling; it has, indeed, occasioned the only difficulty I have felt, and it seemed to me at first a great difficulty, which will be well understood when it is considered who decided that case.

This case does, in effect, if taken absolutely, decide that the lien of a registered judgment was defeated by such a sale as the present, and that the surplus was garnishable as a debt to the mortgagor by the first comer. Now, I take the registered judgment there to have been just in the position of Nicol's execution here, in so far as respects the present question, and the case, therefore, seems to be exactly in point against the propositions I have stated above. But, on reading carefully the judgment of the learned Chief Justice, it is apparent that he is dealing only with the rights of the parties who were then before him and with those rights as they existed strictly at law. Here, however, the whole rights of the parties in law and equity are referred to me, and I think I act upon well understood principles in deciding that Nicol is entitled to be paid in full out of the surplus in the hands of the mortgagees as is claimed by him. That is my conclusion upon the facts of the case.

I refer to Fisher on Mortgages, 2nd Ed. 674, and to Coote on Mortgages, 3rd Ed., 516.

CHANCERY CHAMBERS.

JAMESON v. LAING.

Illusory suit—Taking bill off the files.

A plaintiff in an action at law filed a bill and registered a *lis pendens* against defendant's lands for the sole purpose, as was clearly shown by affidavits filed, of preventing a disposal of them before plaintiff should obtain execution. *Held*, that in the absence of a direct admission by the plaintiff that the suit was a fictitious one, the bill could not be taken off the files, nor the *lis pendens* discharged. The proper course, where the affidavits filed make out a clear case, is for the judge to direct the cause to come on for hearing at the earliest day.

[REFEREE, April 4—BLAKE, V.C.—April 29.

Plaintiff, having sued defendant at law and fearing that defendant might dispose of certain real property before he could obtain judgment, filed a bill setting up a fictitious contract for sale of the property, and issued and registered a *lis pendens* against it. The defendant moved to take the bill off the files and to vacate the *lis pendens*.

Watson, for plaintiff, referred to several unreported cases.

Hoyles, for defendant, referred to *Seaton* v. *Grant*, L. R. 2 Ch. Ap. 459; *Robson* v. *Dodds*, L. R. 8 Eq. 301; *Mortlock* v. *Mortlock*, 20 L. J., N. S., 773; Daniel Ch. Pr., 5th Ed., 326-7.

MR. STEPHENS, Referee, refused the motion with costs.

There was an appeal from this decision which was heard before

BLAKE, V.C.—The material necessary to support an application like the present must contain, as on an application at law to strike out a defendant's plea, a direct admission by the party himself. There being no such admission here, I must refuse to remove the bill; but having no doubt of the facts stated in the affidavits, I direct the cause to be brought to a hearing at the earliest opportunity. When such an application comes before the Referee in Chambers, and there is no doubt of its being a fictitious suit, a convenient course to pursue would be to enlarge the motion before a judge who might then direct an early hearing.

The question of the costs of the motion and appeal were reserved until the hearing*.

Order accordingly.

IN THE FIRST DIVISION COURT OF THE COUNTY OF MIDDLESEX.

(Reported for the *Law Journal* by G. GIBSON, M.A., Student-at-Law.)

RALPH v. GREAT WESTERN R. W. Co.

Jurisdiction—Cause of action—Residence—Railway.

Held, 1. That where a person having a return ticket for a passage from one place to another on a railway line is put off the train at an intermediate point, the cause of action arises at this latter place, and not where the ticket is issued.

2. That a railway company cannot be said to "reside or carry on business" except where their head office is situated.

[London—February 20.

The facts of this case, as they appeared in

*The plaintiff afterwards himself dismissed his own bill on præcipe before the hearing.