

dant in the action as the plaintiff did not seek and could not have any relief as against him. Although the plaintiff's claim would be limited to the amount due by Collins to McKay, and he would have to prove what that indebtedness was, yet that would not justify making Collins a party, as the plaintiff could prove that indebtedness at the trial or on a reference to the master like any other fact without having Collins before the Court.

Order striking out the name of Collins as a party defendant with costs.

*Haney*, for plaintiff. *Hoskin*, for Collins.

Mathers, J.]

[Nov. 20, 1905.

CAMPBELL v. IMPERIAL LOAN CO.

*Parties—Mortgage—Redemption—Purchasers from mortgagee.*

Where, after default in payment of a mortgage of lands, the mortgagee has sold some of the land under the power of sale in the mortgage, the purchasers must be made parties to the action unless the plaintiff is satisfied with judgment for redemption subject to the several agreements of sale, as the sales could not be set aside or inquired into without having the purchasers before the Court.

It would not be sufficient to make the purchasers parties in the master's office under Rule 40 of the King's Bench Act, as that rule applies only to cases where no direct relief is sought against the parties to be added: *Rolph v. Upper Canada Building Co.*, 11 Gr. 275, and *Hopper v. Harrison*, 28 Gr. 22.

*A. J. Andrews*, and *Noble*, for plaintiff. *Howell*, K.C., and *Coldwell*, K.C., for defendants.

Mathers, J.]

SLOUSKI v. HOPP.

[Nov. 20, 1905.

*Mistake—Rescission of contract—Election to affirm.*

Action for the rescission of contract to purchase lot 17 having a cottage on it, on the ground that plaintiff thought his purchase included the adjoining lot 18 being a vacant corner lot. The trial judge found that the plaintiff had entered into the contract under the mistaken belief that he was getting both the lots; but that the defendants had in no way contributed to that mistake and had not been guilty of any fraud or misrepresentation in connection with the sale, and did not know until afterwards that the plaintiff had made such mistake; also, that the purchase