Whitla v. *Halliday* (1 D. & W. 207), as to account that the assignee of the mortgage took subject to the state of the account between the mortgagor and mortgagee, *Mathews* v. *Wallwyn* (4 Ves. 119), and *Moffatt* v. *Bank of Upper Canada* (5 Grant 377)

Roaf, for Messrs. Gladstone, contended that the mortgage having been given to assist Whittemore in raising money, must be held good against the mortgagor, and that, at all events, the evidence could not be read as against them, owing to the absence of the personal representative at the examination.

Taylor, for the plaintiff, contended that the evidence was insufficient to affect his claim, and that it ought not to be read in the absence of the personal representative, because the plaintiff would have the right to fall back upon the estate of Whittemore for any deficency, as the mortgage he held had been also assigned by Whittemore.

S. H. Blake, for the personal representative, objected to the notice of appeal, the appeal should have been within the fourteen days. As he was no party to the suit when the evidence was taken, it could not be read against him or the Gladstones.

P. Cameron, for the infants, submitted to the judgment of the Court.

ESTEN, V. C., considered the evidence insufficient to reduce the plaintiff's claim, but held that the Master should have received the evidence as against the parties who had cross-examined the defendant, as they had thereby made him a good witness as against themselves. He also held, that the infant defendants, the heirs of the second mortgagee, were not necessary parties to the suit; that the proper party was the personal representative of his estate. That in regard to the amount due upon the second mortgage, as the evidence seeking to reduce it had been taken in the absence of the personal representative of the late Mr. Whittemore, the Master was right in reporting the whole amount as due, and in rejecting the evidence as taken. The appeal he considered was in time, notice having been served within the fourteen days, but as it had failed on the main points, viz., reducing the amounts due on the mortgages, he dismissed it with costs.

MARTIN V. REID.

Practice—Demurrer—Amending Bill—Costs.

When a bill is demurred to, the usual order to amend without costs is irregular. If the demurrer is set down immediately after filing, the defendant waives his right to taxed costs, But otherwise a plaintiff may submit to a demurrer on payment of 20s. costs.

In this case, the plaintiff's bill had been answered and demurred to, and immediately after, the usual order to amend had been taken out and the bill amended in one particular, not affecting the principal ground of demurrer; a motion was made to discharge the order for irregularity.

ESTEN, V. C., granted the motion, discharging the order. When a bill is demurred to, it cannot be amended without the plaintiff submitting to the demurrer. If the defendant sets down the demurrer for argument, he waives his right to taxed costs, but if not set down the plaintiff may submit to the demurrer on payment of 20s. costs.

CRANDELL V. MOON.

Practice—Evidence—Master's Office.

The Master is bound equally with the court, to allow a witness to be cross-examined on the whole case, without regard to his examination in chief. But in some cases the Master may exercise a discretion as to who should pay the fees of the examination.

On a motion made against a decision of the Master, that the cross-examination of a witness, should be confined to matters arising out of the examination in chief,

ESTEN, V. C., held, that the Master was equally bound with the court, to allow cross-examination of each witness on the whole case, without regard to the limits of the examination in chief. He also remarked that an extraordinary case might occur, as where a witness is called to prove a single point, and the cross-examination extends over the whole case, which might justify the Master in exercising a discretion as to the party to whom to charge his own fees.

RUSSEL V. ROBERTSON.

Foreclosure—Accounts—Insurance moneys.

Held, that in the absence of an agreement between the parties, the receipt of insurance moneys by the mortgagee during the currency of the six months allowed for redemption, does not necessitate the taking of a subsequent account: that the mortgagee is not in all cases bound to apply such moneys in reduction of the mortgage debt; and conversely, that the mortgagee is not entitled, in all cases, to charge the Mortgagor with the amounts of the premiums.

In moving for a final order, in was admitted on the part of the plaintiff, that she had received a sum of £500 for the loss occasioned by fire to the mortgaged premises and *W. Davis*, for the defendant Robertson (the mortgagor), contended that a subsequent account should be ordered, and that the £500 should be deducted from the amount payable under the decree.

Cattanach, for the plaintiff, showed that the insurance had been effected by her as mortgagee, without any privity or arrangement with the mortgagor; that she had not attempted to charge him with the amount of the premiums, and that, in fact, she had insured merely for her own protection and by way of further security.

SPRAGGE, V. C., after consideration, sustained the motion and held, that in the absence of any agreement between the parties, where a mortgagee for his own benefit and security insured the mortgaged premises, and received the amount of the policy, that amount should not be taken into the account and allowed to the mortgagor; agreeing with *White* v. *Brown* (2 Cush. Mass. Rep. 412). The English cases referred to were, *Dobson* v. *Land* (8 Hare 216), *Ex parte Lancaster* (4 Deg. & S. 524), *Gottlieb* v. *Cranch* (4 Deg. M. & G. 440), *Lea* v. *Hinton* (19 Beav. 324), and *Henson* v. *Blackwell* (4 Hare 434).

GENERAL CORRESPONDENCE.

Assessments—Non Residents—Statute Labor—Commutation.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—I would respectfully submit the following questions for your consideration trusting that you will be kind enough to give your opinion in the next number of the *Law Journal*.

1st. Has any Non-Resident, or only such as are admitted under the 87th section of the Assessment Act to perform statute labor, the privilege of paying commutation statute labor upon the aggregate valuation of his lands, (if paid before the first of May), under the 88th clause of the said act?

2nd. Whether do the words "returned as such" in the 88 clause, refer to "defaulter" or "non-resident."

3rd. If all non-residents have the privilege of paying commutation statute labor upon the aggregate valuation (if paid before the first of May), how is the proper amount to be ascertained if not entered on the roll by the Clerk against the non-resident; the Treasurer who is the collector of non-resident rates, being required to furnish the owner of non-resident lands with a statement of the amount of arrears only against each lot, (see 114 section.)

I remain, Gentlemen,

yours very respectfully, A.

1st. As at present advised we think the privilege is restricted to such non-residents as are admitted to perform statute labor in respect of lands owned by them.

2nd. "Defaulters" in our opinion.

3rd. The answer No. 1 renders our answer to this, unnecessary.