

Rule 566, on the other hand, deals with the right of a person, other than the judgment creditor, to issue an execution. The mere prosecution of an action is a comparatively simple and innocuous thing, and there is no reason why a person alleging title should not be at liberty to issue a formal order permitting continuation of the action, but the case is far different where it is sought to issue an execution—there a *præcipe* order is not sufficient. On the death of the judgment creditor, his executor cannot issue an execution without leave being granted. The mere *præcipe* order under Rule 301 is not sufficient to answer the requirements of Rule 566.

Upon the hearing of this motion, it was arranged that the defendants should pay the taxed costs into Court, and should thereupon be discharged from liability. Having this in view, the proper disposition of this motion is to direct that no order shall issue until the contest in the Surrogate Court is at an end. If Jeanette Smith obtains probate, then, upon production of the probate, an order may issue directing payment out of Court of the money paid into Court to her and affirming the order to proceed. If she fails to obtain probate, the learned Judge may be spoken to again.

No costs should be awarded to either party upon either the motion to set aside the *præcipe* order or this appeal.

ROSE, J., IN CHAMBERS.

MAY 7TH, 1919.

TOWN OF BLIND RIVER v. WHITE FALLS LUMBER
CO. LIMITED.

Attachment of Debts—Moneys Alleged to be Due to Judgment Debtor by Insurance Company, Garnishee—Destruction by Fire of Building on Mortgaged Premises—Claim by Mortgagee (Judgment Creditor) to Insurance Moneys—Adverse Claim of Bank under Assignment from Judgment Debtor—Claims Based upon Agreements with or Representations by Insurance Company—Attaching Order and Subsequent Order Directing Payment into Court and trial of Issue Set aside—Rule 590.

Appeal by the Imperial Bank of Canada, claimant, from orders of the Local Judge at Sault Ste. Marie, attaching moneys said to be due from the Century Fire Insurance Company Limited, the garnishee, to the White Falls Lumber Company Limited, judgment debtor of the Corporation of the Town of Blind River, and directing that such moneys should be paid into Court and that