living at the time of said distribution, so that the issue of any of the said daughters who may be dead shall receive her or their parent's share. The widow survived the testator and died without having remarried. A son, C.K.R., and a daughter, M., also survived the testator, but died prior to the widow, the former leaving no issue and the latter a son, F., and a daughter, M.C., the said last named daughter also having died leaving two children.

Held, that the word *children* here must be taken in its primary sense, *i.e.*, the immediate children of the testator, and excluded grandchildren, so that F. took the whole of his mother's share, to the exclusion of the children of the daughter M.C., and that the legacy to C.K.R. became vested on testator's death, payable on the widow's death, and so his personal representatives were entitled thereto,

W. N. Miller, Q.C., for the plaintiff.

John Hoskin, Q.C., for the infant defendants.

D. E. Thomson, Q.C., *Bowlby*, Q.C., and *D. H. Williams* for the other defendants.

Practice.

Q.B. Div'l Court.] [Feb. 27.

ROSS *v.* EDWARDS.

Staying proceedings—Vexatious action—Abuse of process of court.

H. & Bro., being the owners of certain lumber in the hands of the defendants as warehousemen, sold it to L., who gave his promissory note for the purchase money, and pledged the lumber to the plaintiff's testator for an advance of money, and the defendants agreed to hold it to the order of the testator. L. having become insolvent, H. & Bro. notified the defendants not to deliver the lumber to L. or to the testator, and the testator demanded the delivery of the lumber to him. The defendants then interpleaded, and an order was made upon consent of the testator directing a sale of lumber and payments of proceeds into court and the trial of an issue between the testator and H. & Bro. to determine which of them was entitled to the lumber or the proceeds thereof. That issue was determined in favour of H. & Bro. The plaintiff then brought this action for conversion of the lumber, the alleged conversion being the non-delivery by the defendants to the testator of the lumber which they agreed to hold to the order of the testator.

Held, that this action was vexatious and an abuse of the process of the court, and an order was made staying it with costs.

A. Ferguson, Q.C., and *W. M. Douglas* for the plaintiff.

Robinson, Q.C., and *Shepley*, Q.C., for the defendants.

Chy. Div'l Court.] [March 29.

MILLAR *v.* MACDONALD.

Judgment debtor — Unsatisfactory answers — Rule 932—Order refusing to commit — Appeal from—Partly appearing in person—Costs.

An appeal lies to a Divisional Court from an order in Chambers refusing an application under Rule 932 to commit a judgment debtor for unsatisfactory answers; but, as the liberty of the subject is at stake, the appellate court will not reverse the order unless the judge below has erred in principle or is almost "overwhelmingly" wrong.

And under the circumstances of this case the court refused to interfere.

Graham v. *Devlin*, 13 P.R. 245, approved and followed.

The judgment debtor appeared in person and argued his own case on appeal.

Held, that he should be allowed to set off against the judgment debt his disbursements and a moderate allowance for his time and trouble on the argument.

W. R. Smyth for the plaintiff.

The defendant in person.

BRYCE *v.* KINNEE.

Sheriff's interpleader—Form of issue—Jus tertii Rejection of evidence — Amendment — New trial.

An interpleader issue as to goods seized by a sheriff was directed to be tried between the claimants, as plaintiffs, and the execution creditor, as defendant. The form of the issue was whether the goods at the date of seizure were the property of the claimants as against the execution creditor. The claimants' contention was that the goods were not owned by or in