

DIARY FOR NOVEMBER.

1. Sat.....All Saints' Day. Sir Matthew Hale born, 1609. Last day for filing papers and fees for final examination.
2. Sun.....22nd Sunday after Trinity. O'Connor, J., Q.B. D., died, 1887.
7. Fri.....Battle of Tippecanoe.
9. Sun.....23rd Sunday after Trinity. Prince of Wales born, 1841.
11. Tues.....Court of Appeal sits. Battle of Chrysler's Farm, 1813.
12. Wed.....W. B. Richards, 10th C.J. of Q.B., 1868. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Fri.....Falconbridge, J. Q.B.D., appointed 1887.
15. Sat.....Sir M. C. Cameron, J. Q.B., 1878. Macaulay, 1st C.J. of C.P., 1849.
16. Sun.....24th Sunday after Trinity. Erskine died 1823, et. 73.
17. Mon.....Mich. Term commences. High Court Just. Q. B. & C.P.D. Sittings.
19. Wed.....Armour, J., gaz. C.J. Q.B.D., 1887. Galt, J., gaz. C.J. C.P.D., 1887.
21. Fri.....J. Elmsley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
22. Sat.....Lord Clive, 1774.
23. Sun.....25th Sunday after Trinity.
25. Tues.....Marquis of Lorne, Governor-General, 1878.
30. Sun.....Advent Sunday. St. Andrews. Moss, J.A., appointed C.J. of Appeal, 1877. Street, J. Q.B.D., and McMahon, J. C.P.D., appointed 1887.

Reports.

ONTARIO.

COUNTY COURT, COUNTY OF YORK.

[Reported for THE CANADA LAW JOURNAL]

ABELL v. NICOL.

Creditors' Relief Act—Execution Creditors—Interpleader—Scheme of Distribution.

Certain execution creditors had contested a claim under a Bill of Sale successfully. The Bargainee, though his Bill of Sale covered goods which were sold by the sheriff for \$1,734, had offered upon the motion for an interpleader issue to abandon all claims to the goods if his alleged *bona fide* claim for \$383, and some small costs of taking possession were paid by the attacking creditors. This offer was refused and the creditors succeeded in getting the Bill of Sale set aside. The sheriff prepared a scheme of distribution, allotting the whole \$1,734 amongst the execution creditors, plaintiffs in the interpleader issue only, omitting any dividend to two subsequent execution creditors.

Held (1), That looking to the object of the Creditors' Relief Act, to make an equitable distribution of the debtor's assets amongst all the execution creditors, a subsequent creditor who had lodged his execution in time should rank on the fund—first deducting the sum of \$400 and the solicitor and client costs of the contesting creditors—this sum being the real claim of the Bargainee, and the actual amount saved to the creditors by the litigation. The sheriff's scheme directed to be remodelled upon this view.

Held (2), That in attachment proceedings, under the Absconding Debtors' Act, the sheriff should make his statutory entry under Sec. 4, Creditors' Relief Act, forthwith after any final order for distribution (which order

in this case was made at the close of the interpleader proceedings), and not at the expiration of six months from the date of the issue of the first writ of attachment. The sheriff had made his entry at this latter date.

Held (3), That a subsequent creditor who had proved his claim within thirty days from such date, and more than thirty days from the date of the order for distribution, could not be allowed to rank on the fund—the sheriff's wrong entry could not be urged to support such claim. *Semle*: If a creditor fears that he cannot prove his claim within the proper time, he should apply to the Court under Sec. 27 of the Absconding Debtors' Act for an order to extend the time for distribution.

On February 27th, 1890, a writ of attachment issued against the debtor, David Nicol, at the suit of one Monkman, and was duly placed in the hands of the Sheriff of York, who seized the goods of the debtor thereunder.

On March 18th one Rennie obtained a judgment against Nicol, and placed his execution in the sheriff's hands. Prior to this one W. H. Muckle claimed a part of the goods (seized under the attachment) by virtue of a bill of sale made to him by the debtor; and an interpleader order was made by the Master on March 21st, which directed the claimant's right to the goods covered by the bill of sale to be tried. Other parties, amongst them Abell, had served notice of claims to certain goods seized by the sheriff, these goods being manufactured articles, the property of these latter claimants under alleged hire receipts. The attaching and execution creditors declined to contest the title of these latter articles, and the interpleader order as to these claims directed the goods to be delivered up to the claimants. The sheriff, by the said order, was directed to sell the goods covered by the claim of Muckle under his bill of sale, and to hold the proceeds of the sale to abide the further order of the Court. The goods sold realized \$1,734.

On April 11th, one John Nicol obtained a judgment and placed an execution in the sheriff's hands for the amount thereof. The attaching creditor, Monkman, obtained his judgment on April 13th, and on May 2nd placed his writ of execution in the sheriff's hands. The interpleader issue, delivered on April 1st, contained the names of Monkman (the attaching creditor), Rennie & Co., execution creditors, and John Nicol, who at that time had not obtained his judgment, but who joined in the proceedings.

On May 5th the interpleader issue was tried, and judgment pronounced in favor of the plaintiffs (at that date the only execution creditors), and on the same day the execution debtor made