

Chan. Ch.]

FINKLE V. DATE—RE GIECHRIST. BOHN V. FYFE.

[Chan. Ch.]

ants are estopped from applying for further security merely because they have already obtained an order for \$400.

On appeal, **BLAKE, V. C.**, held that the defendant should have applied for an order requiring the plaintiff to give fresh security for costs, when the cause came on for examination and hearing, and as a term of allowing the postponement of the hearing. It was not done then, and should not be allowed now.

Appeal allowed. No costs to either party, the point not having been taken in the argument before the Referee.

FINKLE V. DATE.

Leave to appeal from Master's decision "after the fourteen days.—G. O. 253.

Where the nominee and confidential agent of one party had been appointed receiver against the wish of the other party, and where the delay had not been great and was in some measure explained, leave was given to appeal, though the fourteen days had expired.

[Mr. Stephens—Sept. 6, 1878.

In this suit an appeal had been made to the Referee from the Master's decision appointing a Receiver. This application was made within the fourteen days (G. O., 253)—but was dismissed.

Murdoch now moved for leave to appeal from the said decision. The fourteen days had now expired. He urged that part of the delay was caused by hesitation as to whether to appeal from former order, and he cited *Simpson v. Ottawa and Prescott Railway Co.*, 1 Chy. 99; *Nash v. Glover* 6 Prac. R. 267.

Hoyles, contra. Court will not interfere with appointment of Receiver except in extreme cases: *Kerr on Receivers*, 108. The delay had not been accounted for. The Receiver could be removed if he misconducted himself.

The REFEE—I am not strongly impressed with the merits of the defendant's case for appeal, but there is the question whether Mr. S., the nominee and the confidential agent of the plaintiffs, should have been appointed Receiver in opposition to the wish of the defendant, and this is one which I think should be finally disposed of

by a Judge. The defendant showed his dissatisfaction with the Master's finding and his intention to appeal by his former unsuccessful motion in Chambers which was made in time, and a portion at least of the delay since, which has not been very great, was taken up in considering whether to appeal from that order or make the present application. Under all the circumstances of the case, the delay is not, I think, so great as to preclude me from making the order asked.

Order granted on payment of costs of application.

RE GILCHRIST.

BOHN V. FYFE.

Execution—Orders for payment out of money to an execution creditor.

An execution creditor, with writs in the Sheriff's hands, is entitled to an order for payment of any fund out of court standing to the credit of the debtor, in satisfaction of his judgment and costs.

[Mr. Stephens—Oct. 15, 1878.

This was an administration suit. The report of the Master found Hugh Gilchrist entitled to a legacy, under the will of the testator, of \$275, and the decree on further directions ordered payment out of this among other claims. Several years previously one Hugh McD., had recovered judgment against Gilchrist for an amount which, with subsequent interest and costs, now exceeded the amount of the said legacy. From time to time writs had been issued upon the judgment, but it appeared that Gilchrist possessed no property whatever, except the said legacy. A writ of *fi. fa.* against goods was now in full force in the hands of the Sheriff of York. A stop order was obtained Oct. 2, 1878.

Seton Gordon moved on petition for payment out of the legacy in satisfaction *pro tanto* of the judgment. He submitted that an execution creditor, with writs in the Sheriff's hands is entitled to an order for payment out of any fund in court standing to the credit of the debtor, in satisfaction of his judgment and costs: but the sanction of the court was asked lest otherwise a contempt might be construed and the seizure nullified: *Ex parte Reece*, 16 Law