

TAYLOR, C.J.]

[May 31.

GRANT v. MCKAY.

Practice — Infant — Next friend — Staying proceedings until next friend appointed — Delay in making application.

This was an application by an execution creditor to set aside the issue served by the claimant under an interpleader order, on the ground that the claimant was an infant, and could proceed only by a next friend.

The issue had been directed on an interpleader summons at the instance of the sheriff, and the claimant, who was an infant, had been ordered to be the plaintiff in the issue.

The claimant had appealed to the full court against this order, on the ground that he should have been defendant in the issue instead of plaintiff, but his appeal had been dismissed by the full court.

On the present application, the referee was of opinion that the execution creditor had acquiesced in the proceedings being carried on by the infant without a next friend for so long a time that he could not now insist on the appointment of a next friend. On his refusing to make the order, the execution creditor then appealed to a judge.

Held, that it was not necessary that a next friend should be appointed to act for the infant in the interpleader proceedings before the present stage.

Up to this time the sheriff was the party carrying on the proceedings, and he was entitled to relief and protection whether the claimant was an infant or not, and it is only when the claimant becomes an actor or plaintiff that a next friend for him becomes necessary.

It is laid down in Lush's "Practice," p. 231, and also in Archibald's "Practice," p. 1240, that a writ of summons may be issued by an infant without a next friend, but that the declaration in the action may be set aside, or proceedings stayed until a next friend is appointed, and the making up and serving an interpleader issue is analogous to the declaration in an ordinary action.

Held, also, that nothing appeared from which it could be said that the execution creditor had waived his right to object to the want of a next friend, and that, under the authorities mentioned, to which may be added *Campbell v. Mathewson*, 5 P.R. 91; *Grady v. Hunt*, 3 Ir. C.L. 525, an order should be made staying the proceedings until the appointment of a next friend, and, in default after one month, that the claim should be barred.

Baker for the execution creditor.

Vivian for the claimant.

BAIN, J.]

[May 25.

IN RE COMMERCIAL BANK OF MANITOBA.

LA BANQUE D' HOCHELAGA'S CLAIM.

Alteration of cheque after acceptance — Liability of bank on altered cheque.

This was a claim made by La Banque d' Hochelaga for the amount of a cheque for \$359.95 drawn upon the Commercial Bank of Manitoba by A. H.