McInnes convenanted to pay the balance of the purchase money in certain instalments none of which were due at the time of the service of a garnishing order in this action upon McInnes. This was a motion made after the due date of one of the instalments for an order for the garnishee to pay it over to the plaintiff who had in the meantime recovered judgment.

Held, 1. That the garnishee order covered the instalments although none of them were due and payable at the time of the service of it.

2. That a subsequent sale of his interest in the land by the garnishee to a third party, under an agreement, whereby this party assumed liability to the defendant for the remaining unpaid instalments, made no difference and could not deprive the plaintiff of his rights under his order.

3. The plaintiff was entitled, under Rule 764 of the ing's Bench Act, to an order for payment not only of the overdue instalment but also, when due, of those still to fall due until his judgment should be satisfied.

Fullerton, for plaintiff. *McPherson*, for garnishee.

Mathers, J.] [May 20.

LEVI *v*. PHŒNIX INSURANCE CO.

Practice—Joinder of defendants—Suit against two companies insuring same property—King's Bench Act, Rule 219.

Held, that Rule 219 of the King's Bench Act, R.S.M. 1902, c. 40, does not permit a plaintiff to proceed in one action against two separate insurance companies upon separate policies of insurance, although they cover the same goods destroyed by the same fire.

Foulds v. *Foulds*, 17 P. R. 480; *Hinds* v. *Barrie*, 6 O.L.R. 656, and *Andrews* v. *Forsythe*, 7 O.L.R. 188, followed.

Plaintiff was required to elect within five days which company she would proceed against in this action and to discontinue as against the other.

Burbidge, for plaintiff. *Anderson*, for Phœnix Ins. Co. *Stackpoole*, for Rochester German Ins. Co.