

writ of execution issued by the plaintiff on Feb. 8, and that he should distribute the moneys among those entitled to share in them on Feb. 8 without paying the plaintiffs any part thereof. The plaintiffs appealed against the two last mentioned orders.

*Held*, 1. Since the passage of s. 58 of The King's Bench Act, R.S.M. c. 58, an order of a single judge cannot be set aside, varied, amended, or discharged, except on appeal to the Court in banc, unless the case comes within the provision of Rule 638, that clerical mistakes in judgments and orders, or errors arising therein from any accidental slip, or omission, may, at any time, be corrected by the Court, or judge, on motion without an appeal; and, therefore, the order of April 20, barring the plaintiff from the distribution was made without jurisdiction, and should be set aside. *In re Suffield and Watts*, 20 Q.B.D. 693, and *Preston Banking Co. v. Allsup* (1894) A.C. 141, followed.

2. Under Rule 438, which provides that any party affected by an ex parte order, except the party issuing the same, may move to vary, or rescind the order within four days, from the time of its coming to his notice, or within such further time as the judge may allow, it was competent for the judge to make the order of March 13, rescinding his order of Feb. 7, as that order, having been obtained without notice to Merrick Anderson & Co., should, as regards them, be considered as an ex parte order, and, although Merrick Anderson & Co. had not applied within two weeks, or within four days, from acquiring a knowledge of it, the judge had allowed further time, as provided for by that Rule; that there was no sufficient reason for interfering with the discretion exercised by the judge in making the order appealed against: and that it should stand.

3. A creditor having no other cause of action than one based on a debt not yet due and payable, has no right to apply, under s. 27 of the Executions Act, for an order delaying the distribution by the sheriff. No costs to either party.

*Wilson and McPherson*, for plaintiff. *Mulock*, K.C., for Merrick Anderson & Co.

Full Court.]

BRYDGES & CLEMENTS.

[Feb. 1.

*Principal and agent—Commission on sale of land—Right to commission when sale falls through—Amount payable in that case.*

After the plaintiff had procured a purchaser ready and willing to carry out the purchase of the property in question, on terms satisfactory to the defendant, the proposed purchaser discovered that the north wall of the building, on the property, was out of plumb, and slightly overhung the adjoining lot, and called on the defendant to make good the title to the building, which formed part of the property bought. Being unable, or unwilling, to make good the defect in title, or to make satisfactory terms