

This order was served in due course upon Mrs. Gaymon, but it is quite apparent that she had no intelligent understanding of its nature until it was seen by her solicitors, which was not until 26th December, and they on that day applied to plaintiff's solicitors for an extension of time to appeal from the order, and, this being refused, this motion was launched on 28th December. I think, in these circumstances, the leave to appeal should be granted.

It was contended for plaintiff that defendant must, under Rule 358, first apply to the local Judge to rescind the order. I do not think, however, that is her only remedy. The practice followed seems also to be open to her.

It remains then to be considered whether plaintiff would have been entitled to the order had the parties had an opportunity of being heard when application for it was made.

Plaintiff holds an unsatisfied judgment against defendants, and has execution in the hands of the sheriff of Lincoln.

Under the will of John F. Rittenhouse . . . certain provisions are made for the benefit of defendant Alberta Gaymon, his daughter, the following being the clauses material for consideration:

"I desire that my trustees shall retain in their possession the share of my daughter Alberta Gaymon . . . and invest the said share to the best advantage so as to pay her a fair income sufficient to maintain her, and free from any interference on the part of her husband. I direct my executors and trustees to set apart my stock in the Security Loan and Savings Co. as a part of the share of my said daughter . . . and if said stock does not pay a sufficient income to maintain my said daughter in comfortable circumstances, according to the discretion of my trustees, then I give them full power to sell my stock in the said company and invest the same as to them may seem proper. It is my express wish that in no way shall my said daughter be allowed to anticipate her income or deal in any way with the capital so invested. In the event of the death of her husband . . . the share of my said daughter Alberta may be handed over to her by my said executors to deal with as she may see fit, if they deem it wise."

The material before me does not shew that at the date of the order in question there were any arrears of income in