

been taken against the individuals liable and until it was shewn that such proceedings would be unsuccessful, thus involving a delay of perhaps many months, it would be difficult, if not impossible, to secure the prompt services of nurses or physicians or to procure necessary food, medicines and supplies, and such could not have been the intention of the Legislature in passing the Act.

Appeal dismissed with costs.

*Wilson*, for plaintiff. *Aikins*, K.C., for defendant.

Full Court.] SPEIGHT WAGGON CO. v. CURRIE. [Feb. 1.

*Executions Act*, R.S.M. 1902, c. 58, ss. 24-27—*Extension of time for creditor to get judgment in order to share in distribution by sheriff—Power of judge to alter, vary, or add to his own order—Power to rescind his own order—King's Bench Act*, R.S.M. 1902, c. 40, s. 58, R. 438, 638.

The sheriff, having realized certain moneys under executions against the defendants, gave, on Nov. 8, 1902, the notice required by R.S.M. 1902, c. 58, s. 25, which requires him to delay the distribution of the money for three months, to enable other creditors to get judgment, and place their executions in his hands, and then to distribute the funds in his hands among all persons having unsatisfied executions in force in his hands at the date of distribution. Sec. 27 provides that, in case any person, to whom the same debtor is justly liable for any debt or liquidated demand, or such a demand as would have been the subject of a former action, upon the common or money counts, is unable, for any reason which he cannot by due diligence overcome, to obtain judgment against the said defendant, a Judge of the Court of King's Bench may order the distribution by the sheriff to be wholly or partially delayed, as may seem just for a further period. Under this provision the plaintiffs, on Feb. 7, 1903, on notice of motion which was served only on the sheriff, obtained an order in chambers from Mr. Justice Richards that the sheriff should delay the distribution of the money until March 30; but the order provided that any interested party might move to vary, or rescind it, within two weeks after the service thereof on the sheriff. This service was made on Feb. 9. On March 13, following, Merrick Anderson & Co., on whose writs of execution the sheriff had realized the moneys referred to, on notice of motion given by special leave of the same judge, obtained from him an order that the one made by him, on Feb. 7, delaying the distribution, should be set aside, with costs to be paid by the plaintiffs, on the ground that they had not used due diligence in obtaining judgment. On April 20, following, Merrick Anderson & Co. obtained a further order from the same judge, directing that his order of March 13, should be amended, *nunc pro tunc*, by adding a clause thereto that the sheriff should have no regard to the