"wrongfully and unlawfully and without instructions" was not a sufficient allegation of malice and want of probable cause to support the action.

(2) The allegations that, by reason of the act complained of, the plaintiff was injured in his calling and occupation as a builder, and in his credit and reputation, and delayed in the performance of his contracts, and had to procure moneys at a higher rate of interest, and that other creditors were induced to take action against him, and in order to compromise and settle such actions he had to sacrifice his property, were not sufficient allegations of special damage.

E. D. Armour, Q.C., for the demurrer.

Swartout, contra.

Practice.

Q.B. Div'l Court.] [Nov. 21

COLEMAN *v.* CITY OF TORONTO.

Discovery—Examination of officer of municipal corporation—Medical health officer.

In an action for an injunction and damages in respect of the alleged insanitary condition of a certain bay into which the defendants drained part of their sewage, the plaintiffs sought to examine for discovery the medical health officer of the defendants, whose sole connection with the subject-matter of the action arose from his having made an examination of and a report to the local board of health upon the sanitary condition of the bay. The plaintiffs desired to cross-examine upon the report and to have its meaning explained.

Held, that, having regard to the kind of discovery which the plaintiffs desired to obtain from the medical health officer, he was not examinable as an officer of the defendants.

Decision of GALT, C.J., *ante* p. 575, 15 P.R. 27, affirmed.

R. Boultbee for the plaintiffs.

H. M. Mowat for the defendants.

BOYD, C.]

RE WARTMEN.

Will—Devise—Postponement of enjoyment—Vested interest—Present payment.

A testator directed the realization of his estate and the deposit of the proceeds in a bank until his youngest child should come of age, when they were to be divided among three named children. Two of the children attained 21, and sold and assigned all their interests to third parties. The estate was wound up except as to the division, and the purchasers applied to the court for an order for the payment to them of the two shares so assigned without waiting for the coming of age of the youngest child.

Held, that the two children who were of age had a vested interest absolute, which, under the rule laid down in *Curtis* v. *Lukin*, 5 Beav., at p. 155, warranted an order for the present payment.

Hoyles, Q.C., for the petitioners.

J. Hoskin, Q.C., official guardian for the infant.

THE MASTER IN CHAMBERS.] [Nov. 23.

EMERSON *v.* HUMPHRIES.

Interpleader — Writ of possession — Adverse claim—Right of sheriff to interplead—Rule 1141 (b)—Parties—Infant devisees—Executors—Mortgage action—Claim for possession of land.

In an action upon a mortgage made by a deceased person, who died in 1889, payment, foreclosure, and possession were claimed, and the executors were the only defendants. Judgment for possession, *inter alia*, was recovered, and a writ of possession placed in the sheriff's hands. The widow, who was one of the executors, and the infant children of the deceased mortgagor had an interest under the will in the mortgaged lands, and were in possession when the sheriff attempted to execute the writ. The infants, and the widow as their guardian, made a claim to the possession as against the writ, based on the ground of the infants not having been made parties to the action.

Held, that the sheriff, by virtue of Rule 1141 *(b)*, was entitled to interplead.

Held, that the action as regards the claim for possession was properly constituted; and the infants were bound by the judgment against the executors.

Keen v. *Codd*, 14 P.R. 182, distinguished.

R. J. MacLennan for the sheriff.

G. C. Campbell for the plaintiffs.

Ballantyne for the defendant.

F. W. Harcourt for the infant claimants.