C. P. Div.] [January 2.

THE SARNIA AGRICULTURAL, ETC., CO. v. PERDUE.

*Changing venue—Judge in Chambers—Judge at assizes—Divisional Court—Convenience—Costs.*

Mr. Winchester, sitting for the Master in Chambers, refused an application by the defendant to change the place of trial from Sarnia to Stratford, but gave leave to bring on an appeal from his order, or a substantive motion to change the place of trial before ARMOUR, J., at the Sarnia Assizes.

ARMOUR, J., entertained the motion, which was made according to the leave given, and made the order changing the venue to Stratford. The order was drawn up as made by a judge at the assizes, and was signed by the local Registrar at Sarnia.

*Held*, that, having regard to Rule 254 O. J. A., and to the leave given and the character of the motion, the order of ARMOUR, J., was to be regarded as that of a judge, and not of the High Court, and could therefore be reviewed by the Divisional Court.

There is nothing to prevent a judge sitting at the assizes hearing a Chambers' motion, if he is disposed for the purpose to treat the Court room as his Chambers.

This is not such an application, however, as should be made at the trial, on account of the inconvenience and detriment to the public interest arising from the delay of other business appropriate to the assizes, and on account of the injustice to parties to the cause who have prepared for trial, and it is too late when the assizes have begun to consider the question of the balance of convenience; and therefore, while the Court did not see fit, under the circumstances, to restore the venue to Sarnia, they ordered that the costs of the day at Sarnia and of the several motions to change the venue, as well as of the present appeal, should be costs to the plaintiff in the cause in any event

*W. H. P. Clement*, for the appeal.

*Aylesworth*, contra.

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Boyd, C.] [January 7.

DAWSON v. MOFFATT.

*Stop orders — Execution creditors — Priorities — "Creditors Relief Act, 1880"—Ratable distribution of fund in Court.*

In the case of judgment or execution creditors, priority of payment out of a fund in Court, arrested by stop orders, was formerly determined by the chronological sequence, in which the orders were obtained, and that mode of determining priorities is to be accounted for in this Province, on the ground that such was the order of payment of executions at law; and equity aiding the law conformed to the legal order of administering the fund. But, as this principle of priority of and among execution creditors has been abolished by the "Creditors Relief Act of 1880," it is no longer reasonable or seemly to preserve the analogous system of priorities in awarding equitable execution, as the outcome of stop orders; and therefore, execution creditors who had lodged stop orders between the date when the "Creditors Relief Act, 1880," came into force, and the date of the order for payment out, were held entitled to share ratably in the fund.

*J. H. Ferguson*, *Shepley*, *T. P. Galt*, *G. F. Ruttan* and *Howland*, *Arnoldi* and *Ryerson*, for the different creditors.

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Boyd, C.] [January 7.

CRANE v. CRAIG.

*Infants—Allowance—Past maintenance—Encroaching on principal.*

Where an allowance for past maintenance of infants is sought out of the infants' estate, it is a rule that the principal is not to be encroached upon, unless for unavoidable reasons falling little short of necessity; and the Court will not sanction a higher allowance for past expenditure than would have been awarded for maintenance if a prior application had been made therefor. Where the amount of five infants' estate was $11,250 the master allowed their mother $9,504 for the five years' past maintenance, but BOYD, C. on appeal, reduced the amount to $6,600.

*J. Hoskin*, Q.C., for the appeal.

*George Morphy*, contra.

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