Practice.

BOYD, C.] [Jan. 14.

IN RE CLARK.

Lunacy—Declaration of—Dispute as to property and custody of supposed lunatic.

Where a petition to have C. declared a lunatic was presented by one of his daughters, and it appeared that it was presented with a view to attack a disposition which C. had made of his estate in favor of another daughter, with whom he lived, for which purpose an action had already been begun in C.'s name by a son as next friend, and it also appeared to the judge that there was no reason why C. should not remain in the custody and care of the daughter The petition was dismissed, although C. was undoubtedly a lunatic.

Hoyles, Q.C., for the petitioner.

W. M. Douglas contra.

MEREDITH, J.] [Jan. 21.

ARNOLD *v.* PLAYTER.

Infants—Discovery — Examination—Rule 487.

In a proper case an infant party to an action may now be examined by the opposite party for discovery before the trial, under Rule 487, in the same way as an adult.

Mayor v. *Collins*, 24 Q.B.D. 361, distinguished.

Bristol for the plaintiff.

Kilmer and *H. C. Boultbee* for the defendants.

MR. WINCHESTER.] [Jan. 25.

BEATY *v.* HACKETT.

Attachment of debts—Final order for payment by garnishee — Notice to judgment debtor—Assignment of debt attached—Rescission of final order.

Where a judgment creditor obtains an order attaching debts due to the judgment debtor, notice of the application for a final order for payment over by the garnishee should be served upon the judgment debtor.

Ferguson v. *Carman*, 26 U.C.R. 26, specially referred to.

A garnishee order binds only so much of the debt owing to the debtor from a third party as the debtor can honestly deal with at the time the garnishee order *nisi* is obtained and served.

Where a final order for payment over has been issued and it afterwards appears that the debt had been assigned before the attaching order was moved for, the final order should be rescinded.

Snow for the judgment creditor.

F. W. Garvin for the garnishee.

H. L. Drayton for the claimants.

OSLER, J.A.] [Jan. 28.

ROBINSON *v.* HARRIS.

Appeal bond—Appeal to the Supreme Court of Canada—Parties to bond—Appellant a party—Non-execution by appellant—Condition of bond—Costs awarded by judgment appealed from.

In an appeal to the Supreme Court of Canada it is not necessary that the appellant should be a party to the appeal bond; but if the appellant is made a party and does execute the bond, the respondent is entitled to have it disallowed, for it is unreasonable to ask the respondent to accept a bond to which the sureties may hereafter attempt, whether successfully or not, to raise the defence that they only executed it upon the faith that the appellant would be one of the obligees.

In an appeal bond, where the object was not only to secure payment of the costs which might be awarded by the Supreme Court of Canada under s. 46 of R.S.C., c. 135, but also under s. 47 (e) procure a stay of execution of the judgment appealed from as to the costs thereby awarded against the appellant, the condition was, "shall effectually prosecute the said appeal, and pay such costs and damages as may be awarded against the appellant by the Supreme Court of Canada, and shall pay the amount *by the said mentioned judgment* directed to be paid, either as a debt, or for damages, or for costs," etc.,

Held, that this did not cover costs awarded against the appellant by the judgment appealed from.

Woodworth for the appellant.

F. E. Hodgins for the respondent.