

claim, and the landlord cannot rank on an estate in the hands of an assignee for creditors in respect to them, even after he has recovered judgment therefor.

*Grant v. West* (1896), 23 A.R. 533, followed.

*A. C. Macdonell* for the plaintiff. *W. W. Rowell* for the defendant.

MacMahon, J.]

ROBERTS v. COUGHLIN.

[March 23

*Security for costs—Infant plaintiff out of jurisdiction—Next friend.*

An infant, residing out of the jurisdiction, brought an action for administration, by her mother, who resided in the jurisdiction, but was without substance, as next friend.

*Held*, that the plaintiff could not be required to furnish security for costs. *Magee*, Q.C., for plaintiff. *Woods*, Q.C., for defendants.

Street, J.]

CAMPRELL v. FARLEY.

[March 25.

*Parties—Claim against partnership—Administratrix of deceased partner—Concurrent administration proceedings—Action against surviving partner—Indemnity—Relief over—Third party procedure.*

At law, as well as in equity, before the Judicature Act, a partnership debt was, in strictness, joint and not several, and upon the death of one partner the only liability existing at law was that of the surviving partner; the estate of the deceased partner being only made available through the equities existing in favour of the surviving partner, which the partnership creditors were allowed to make use of; and the Act has not converted into a joint and several debt that which had theretofore been merely joint. *Kendall v. Hamilton*, 4 App. Cas. 504, and *In re Hodgson*, 31 Ch. D. 177, followed.

In an action by creditors of a partnership against the surviving partner and the administratrix of the estate of the deceased partner, the name of the administratrix was struck out, leaving the creditors to pursue their remedy against the estate in a proceeding pending for its administration, and to proceed concurrently with the action against the surviving partner.

*Held*, also, that a claim of the surviving partner against the estate of the deceased for indemnity or relief over and in respect of the plaintiffs' claim, must be made in the administration proceedings and not in the action under the third party procedure.

*Held*, further, that the right of the surviving partner against the administratrix, in her personal capacity, to recover upon a mortgage given by her as a security to him against his liability to the plaintiffs, was neither a right to indemnity nor to relief over, because it was a right which might be enforced before he was damnified, there being no reference on the face of instrument to the liability asserted by the plaintiffs; and, therefore, she could not be brought in as a third party.

*J. H. Moss* for plaintiffs. *Tremear* for defendant Farley. *W. E. Middleton* for defendant MacDonald.