

at the trustees' remuneration, but that they should be allowed a sum to cover their trouble in making the exchange; and the allowance made by a referee was reduced from \$162.50 to \$50.

Certain rents were collected by the trustees through an agent, whom they paid by commission.

Held, that they were justified in employing an agent to make the actual collections for them, but were bound to look after the agent, and for their own care, trouble and responsibility were entitled to an allowance of two and a half per cent. upon the rents collected.

Mass. Q.C., for the trustees,

W. H. C. Kerr, for the *cestui que trust*.

BOYD, C.]

[Jan. 14, 1889

In re ANDERSON AND BARBER.

Interpleader—Intercepting rent—Action for rent in County Court—Application by tenant to High Court for interpleader order—Entitling of affidavits—Garnishment by Division Court creditors—Charging order—Rules 1141 et seq., 1162 et seq.—Costs.

Rent being due by A. to B., A. was served as garnishee with Division Court summonses by E. and G., each claiming part of the rent. A. refusing to pay his rent unless he was protected from these claims, he was sued by B. for the full amount of the rent in a County Court. Before this action was begun G. presented to A. an order upon him signed by B. for part of the rent due.

A. applied to a Judge of the High Court of Justice in Chambers for an interpleader order. The affidavits on which he moved were entitled "In the H.C.J., Chy. Div., between A., applicant, and B. and others, claimants."

Held, that A. was entitled to be relieved by calling on the rival parties to interplead, under the procedure indicated by Rules 1141 et seq.; and an objection to the manner of entitling the affidavits was overruled. There was no jurisdiction in the County Court to give relief by way of interpleader in the action brought by B.; the jurisdiction in that Court being limited by Con. Rules 1162 et seq. to proceedings against absconding debtors, and after judgment when execution has issued. G's. claim might have been litigated in the County Court, and would not have been the subject of interpleader proceedings; but the

order made being for a stay of the County Court action and payment into Court by A. of the rent, G's claim should be the subject of inquiry in the High Court.

Held, also, that A's. costs of the application should be borne by E. and G., who submitted to have their claims barred, and also had been the cause of the expense and delay, and that there should be no costs to either party of the County Court action.

Justin, for the applicant.

W. R. Meredith, Q.C., Hoyles, F. R. Powell, and *Robinette*, for the respective claimants.

STREET, J.]

[Jan. 11, 1889

HYNE v. BROWN.

Infant—Defendant in action of tort—Appointment of guardian—Rule 261.

In an action of seduction brought against an infant, the defendant was served personally and entered an appearance in person.

Held, that the common law practice referred to in Rule 261 meant the practice of by which a real guardian and not a fictitious one was appointed; and an order was made requiring the defendant to appear by guardian within six days, and in default for the plaintiff to be at liberty to appoint a guardian for him, the consent of such guardian being shown and that he had no interest adverse to the defendant.

Kappele, for plaintiff.

STREET, J.]

[Jan. 23, 1889.

JOHNSON v. KENYON.

Costs—Scale of—Action for damages for failure to return promissory note—Recovery of \$314—Ascertainment of amount—Jurisdiction of County Court—Offer of costs, effect of.

The plaintiff held the defendant's note for \$300, and gave it back to the defendant to hold until he should be free from a certain liability as surety. After he became freed he refused to give up the note, and destroyed it, and this action was brought for damages for breach of his contract to return the note. The action was referred to a referee, who found the plaintiff entitled to \$314 damages, being the amount of the note and interest.

Held, that as soon as the facts relating to the note had been arrived at, the quantum of damages was a fixed amount, ascertained by calculating the amount of the defendant's