And in this matter it was directed as in *Re Murdoch*, 9 .P.R. 132, that the evidence should be taken *viva voce*, and it was ordered besides that a foreign commission should issue to take evidence abroad and that the parties to the application should be at liberty to examine each other for discovery before the hearing.

Maclennan, Q.C., and *H. J. Scott*, Q.C., for the father of the infants.

S. H. Blake, Q.C., and *H. Cassels* for the mother.

Ferguson, J.]   [Jan. 24.

RE ALLISON ET AL., SOLICITORS.

Solicitor and client—Delivery of bill of costs—Offer by solicitor—Taxation.

Where a solicitor has offered to take in full settlement less than the amount of a bill of costs as rendered, and has made the offer in a manner unequivocal and binding upon him, then, and not otherwise, he is allowed the benefit of the offer, if the client reject it, and proceed to tax the bill.

Re Freeman et al., 1 P. R. 102, and *Re Carthew* and *Re Paull*, 27 Ch. D. 485, considered and explained. And where the offer to make a reduction in the bill was not upon the face of it, nor in any letter accompanying it, but was made verbally, and in the course of a conversation on the subject after the delivery of the bill,

Held, that the offer was not of an unequivocal character, made so as to be binding upon the solicitor, but left him free, when it was not accepted, to claim all he could get upon a taxation, and he was therefore not entitled to the benefit of it.

Macnee, for the solicitors.

Watson, for the client.

Boyd, C.]   [Jan. 25.

MACDONALD V. MCCALL ET AL.

Costs as between solicitor and client—Creditor's action—Contribution—Payment out of fund—Appeals.

In a creditor's action to set aside a chattel mortgage as preferential, the judgment at the trial declared that the mortgage was fraudulent and void as against the plaintiff and such other credi-

tors of the defendant, C., as may contribute to the expenses of the suit. This judgment also directed that the plaintiff should be paid his party and party costs by the defendant, McC., and his additional costs, as between solicitor and client, out of the fund recovered for the creditors by setting aside the mortgage. The case was carried by the defendants to the Court of Appeal and the Supreme Court of Canada, and the judgment at the trial was finally affirmed in all respects, but the additional costs, as between solicitor and client, were not given by the Court of Appeal or the Supreme Court.

Held, that the plaintiff's expenses in saving the fund were not limited to party and party costs, but extended to those incurred, as between solicitor and client, to the end of the proceedings in the appeal to the Supreme Court. The principle is that when, in a creditor's suit, the fund is insufficient to pay the plaintiff his costs, those who have come in and received a benefit under the decree must contribute to make good that loss which the plaintiff has borne on behalf of all creditors. The plaintiff had a right, therefore, to object to the other creditors coming in to share in the fund, until they had contributed to these extra costs; and, in order to avoid circuity, it was directed that they should be taxed and paid out of the fund.

Middleton, for the plaintiff.

George Kerr, for the defendant, McCall.

CORRESPONDENCE.

LIMITATION OF ACTIONS.

To the Editor of the CANADA LAW JOURNAL:

DEAR SIR,—I have read your editorial article in the last number of the CANADA LAW JOURNAL on the subject of the period of limitation for enforcing a mortgage or judgment.

No one will, I suppose, question the propriety of adhering to the course of decision in England in all branches of our law which are founded upon the law of England, and amongst others to English authorities as to the meaning of a Statute which has been copied from an Imperial Act, "*if*," (as put by Judge Rose in *Macdonald* v. *Elliott*, 12 Ont.