goes on for a prescribed period notwithstanding the death of the beneficiary, because to avoid an intestacy the Court will adjudge it to the representatives of the deceased.

Full Court.] [Dec. 23, '89.

SWITZER *v.* LAIDMAN.

Libel and Slander—Pleading—Admission—Justification—Mitigation of damages.

Action for slander, wherein it was charged that in April, the defendant said to A. that the plaintiff had entered her mother's house three or four times, and had stolen, in all, about three or four hundred dollars.

The defendant, in her statement of defence, pleaded that the plaintiff "admitted and confessed to A. K. that it was he who had taken the money."

The trial Judge refused to allow evidence to be given in support of the above plea, insisting that the defendant, if she wished to give such evidence, must enter a formal plea of justification.

Held, that the above ruling was right, but that objection should have been made to the pleading, either by demurrer or by application to strike it out as embarrassing, and there ought to be a new trial with leave to replead or amend the pleadings. The defendant could only set up the matters in question above pleaded in mitigation of damages, by adding thereto on the record that she had now good cause for discrediting that part of the admission or confession alleged to have been made by the plaintiff to A. K., although she honestly believed it to be true at the time she repeated the words complained of.

Carscallen, for the plaintiff.

Staunton, for the defendant.

Full Court.] [Dec. 23, '89.

RYAN *v.* MCCONNELL.

Bills and Notes—Notes as collateral security—Laches of creditors—Release of principal debtor—Necessity of proving actual injury.

Where promissory notes of third persons were turned over by the defendant without endorsement as collateral security for a debt due by him to the plaintiff, and the plaintiff now sued the defendant for the amount of the debt, and the defendant raised the objection that the plaintiff had been guilty of laches in proceeding for the payment of the collateral notes,

Held, that if the defendant had been injured by such laches, and to the extent of which he had been injured, he should be exonerated from payment, but not otherwise; and the trial Judge had pushed the law too far against the plaintiff in holding that having found the laches as a matter of fact it was a conclusion of law that detriment had followed to the defendant.

Haverson, for the plaintiff.

Mills, for the defendant.

Practice.

Q. B. Div'l Ct.] [Dec. 21, '89.

TRUAX *v.* DIXON.

Costs—Scale of—Action by sub-contractors to enforce mechanics' lien—Amounts in question—Investigating of accounts—Jurisdiction of County Court and Division Court—R.S.O., c. 126, s. 28—Right of defendant land-owner to set-off of costs—Action tried without a jury—Powers of taxing officer—Amendment of judgment.

The plaintiffs, sub-contractors, in an action brought in the High Court to enforce a mechanics' lien, claimed against the contractor $245.29, and recovered $284.54. They claimed a lien on the land for the amount due them, but upon the investigation of accounts to the extent of upwards of $1,700, between the contractor and the land-owner, it was found that the latter owed only $63.79, and the plaintiffs' lien was limited to this amount.

Held, upon an appeal from taxation of costs, that the contractor could not have sued the land-owner in the Division Court to recover the balance of $63.79, but must have proceeded in the County Court, and the plaintiffs, suing upon the same claim, were therefore entitled to County Court costs, and as the plaintiffs' claim was also beyond the jurisdiction of the Division Court, upon any construction of s. 28 of the Mechanics' Lien Act, R.S.O., c. 126, the plaintiffs could not have brought their action in the Division Court.

Held, also that, as the plaintiffs could not have hoped to establish a case which would have entitled them to High Court costs, the defendant land-owner should be allowed a set-off of the excess of his costs incurred in the High Court over what he would have incurred in the