able, it being the intention, and the said Boyd is hereby indemnified, or intended so to be, from all and every liability of every nature and kind soever of the said firm of Robinson & Boyd, then this obligation to be void, otherwise to be in full force and effect."

Judgments were recovered by creditors of the firm against both Boyd and Robinson, and Boyd now sued Mary Robinson to recover the amount required to pay those judgments, although he had not himself paid them.

Held, reversing the dicision of ARMOUR, C.J., that the plaintiff was entitled to have the amount of the judgments paid into court, and to the costs of the action.

Per BOYD, C.: The strict construction of such contracts to be found in some earlier cases, limiting to recovery for actual damage, is not now to be commended when the court can so mould its judgment as to secure the application of the proceeds of the judgment to the person ultimately entitled to receive them.

J. Macgregor for the plaintiff.

Shepley, Q.C., for the defendants.

Full Court.] [Feb. 3.

BARBER *v.* CLARK.

Mistake — Over-payment of legacy — Interest, when allowable.

This was an action brought to recover a balance alleged to be due and unpaid upon a certain legacy.

The legacy, $60,000, was to be paid to the executor of the will, for the plaintiff, by the devisee of certain real estate, upon which it was charged, in twenty equal semi-annual payments, commencing six months after the testator's death, and to bear interest at the rate of 6 per cent. payable semi-annually at the time of each of such payments on the amount of such payment, to be computed from the time of the decease.

It appeared that eighteen of such semi-annual payments of $3000 had been made, but interest had been paid half-yearly on the whole amount of principal money unpaid, instead of interest computed merely upon each $3000. This arose from common error and mistake.

The moneys were paid so as to separate principal and interest, and the interest payments were consumed by the plaintiff in living expenses, whereas the principal moneys were nvested by him from time to time.

Held, that all the payments made should be taken into account, and applied (without addition of interest) to the aggregate of the amounts properly due and payable under the terms of the will, and so it should be ascertained if there was any balance due to the plaintiff.

Kilmer for the plaintiff.

Macdonald, Q.C., for J. R. Barber.

Kappele for J. P. Clarke.

Practice.

ROBERTSON, J.] [Jan. 21.

IN RE PARSONS, JONES *v.* KELLAND.

Money in court—Payment out to administratrix—Infants.

The administratrix of a deceased party was allowed to take out of court a sum of $210, which was part of the personal estate of the deceased, notwithstanding that two infants were among the next of kin who would be entitled to share in the estate after payment of debts, etc.

Hanrahan v. *Hanrahan*, 19 O.R. 396, followed.

Swabey for the administratrix.

J. Hoskin, Q.C., for the infants.

MACMAHON, J.] [Jan. 31.

IN RE BUTTERFIELD, A SOLICITOR.

Solicitor and client—Delivery of bills of costs before termination of actions—Application for taxation—Time—Special circumstances—R.S.O., c. 147, s. 34.

The solicitor defended an action of ejectment and prosecuted three actions for malicious prosecution on behalf of the applicants. On the 18th October, 1889, before the termination of any of the actions, the solicitor delivered to the applicants his bills of costs in them all up to that time. On the 29th April, 1890, he delivered further bills of costs in all the actions, which had then been brought to an end.

Application for a reference of all the bills to taxation was made on the 20th November, 1890.

Held, that the application was in time; for the retainer existed until the litigation ended; and the applicants had a full year from the delivery of the bills last delivered to apply for the taxation of all the bills.