Held, also, that the property in the part of the iron which was not delivered to the defendants must be taken to remain in the plaintiffs; for the defendants had never exercised their right to test it, and had refused to receive it, and until tested the plaintiffs could not compel the defendants to accept it.

The action was treated as one for the price of iron which the defendants accepted, and for damages arising from their refusal to accept the remainder; and, in accordance with the findings of the jury, which in the opinion of the court were sustained by the evidence, judgment was entered for the plaintiffs for the actual value of the part of the iron delivered only (the damages having been negatived by the jury); and for the defendants upon their counter-claim for damages sustained from the breach of contract other than by reason of the inferior quality of the iron.

Robinson, Q.C., and *Lash*, Q.C., for the plaintiffs.

McCarthy, Q.C., *Watson*, and *J. M' Clark*, for the defendants.

Practice.

Boyd, C.] [April 9.

MILLS *v.* MILLS.

Foreign commission—Evidence of party—Alimony action—Criminal proceedings.

There is no hard and fast rule as to the granting or refusing of a foreign commission; it is a matter of discretion; but in case of the examination of a party being sought, the court will be more circumspect than in the case of an ordinary witness. In an action of alimony, where there were allegations of cruelty, and the plaintiff had also instituted criminal proceedings for bigamy against the defendant, who left the jurisdiction and applied to be examined abroad,

Held, that the defendant was a necessary witness, and that the reason given by him for not being able to attend the trial, viz., that he was afraid to return to the jurisdiction on account of the criminal proceedings, was sufficient, and a commission was ordered.

J. E. Hodgins, for the plaintiff.

Hoyles, for the defendant.

Boyd, C.] [April 16.

In re JACKSON-MASSEY *v.* CROOKSHANKS.

Infant—Defendant qua executor—Service on official guardian.

Held, that administration proceedings taken against an infant co-executor without observing the usual practice of serving the official guardian were invalid.

The provisions of the rules and general orders as to service in case of infancy apply, whether the infant be a sole or a joint defendant, and whether he be sued personally or in a representative capacity.

W. H. Blake, for the plaintiff.

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

Boyd, C.] [April 18.

HACKET *v.* BIBLE.

Solicitor and client—Authority of solicitor to settle—Variation of interpleader order.

A solictor retained to collect a debt is not entitled to interplead without a further retainer for that purpose, but being so retained, he has the ordinary rights of solicitors as in other contested cases.

And where solicitors properly representing the claimant and the execution creditors in an interpleader, made an arrangement by which $441 of the claim made and provided for in the interpleader order was abandoned, and the sheriff, by the direction and consent of both solicitors, in good faith distributed $441 among the creditors entitled, and paid only the balance into court, instead of the whole proceeds of the sale, as directed by the interpleader order, which was not amended.

Held, that the solicitors had authority to make such a variation of the order, and the sheriff was justified in acting upon it; and it made no difference that the interpleader order was a consent order, for it was an interlocutory order, and the variation did not affect third parties.

Bain, Q.C., for the claimant.

H. J. Scott, Q.C., for the sheriff.