Boyd, C.] IN RE BENNINGTON. [May 20.

Devolution of Estates Act—Executors and administrators—Power to mortgage lands—Consent of official guardian.

John Hoskin Q.C., as official guardian, applied under Rule 972 for an order or direction touching certain real estate in which infants were interested, the question being whether executors or administrators had power under s. 9 of the Devolution of Estates Act, R.S.O. c. 127, with the consent of the official guardian, to mortgage the lands in question.

THE CHANCELLOR held that the executors or administrators had such power with such consent.

Boyd, C.] NEVILLE *v.* BALLARD. [May 20.

Solicitor—Charging order—Infant plaintiff—Action for personal injuries—Lien on taxed costs.

An application by the solicitor for the infant plaintiff, under Rule 1129, for an order charging the amount of the judgment recovered by the plaintiff against the defendant with the costs incurred by the applicant as between solicitor and client.

Held, that by Rule 1129 a discretionary power is given to the Court; the solicitor has no absolute right to the charge, but only power to ask the Court, in the exercise of its discretion, to make the charge: *Re Humphries* (1898) 1 Ch. 526. The Rule gives the solicitor an ancillary right—one not intended to displace the liability of the client to pay the solicitor out of his own pocket, but ancillary to his right to be paid on his retainer: *Groom* v. *Cheesewright* (1895) 1 Ch. 730. Here the retainer was given by the father of the infant, and the infant plaintiff was not liable to the solicitor for any of the costs. It was just that the costs taxed against the opposite party by virtue of the solicitor's exertions should be charged or impounded to answer the solicitor's lien. But beyond this, in the case of actions grounded on personal injuries to infants, the Court ought not to go.

Order made directing that the judgment should stand charged to the extent of the taxed costs in favour of the solicitor, and enjoin the infant and next friend from receiving or disposing of the same. No costs of the application.

The Chancellor subsequently refused an application by the solicitor for the plaintiff, to add to the order a direction that the charge should be enforced by the sale of the judgment.

Mulvey for the applicant. *J Hoskin*, Q.C., for the infant plaintiffs.

Boyd, C.] DAVIDSON *v.* MERRITTON WOOD AND PULP CO. [May 25.

Settlement of action—Validity of—Trial—Issue—Action—Pleading.

An assignee for the benefit of creditors under a statutory assignment, having brought an action for damages for breach of a contract made by his assignor with the defendants, made a compromise settlement with the defendants, before the delivery of pleadings, while he was in gaol, and without