Meredith, C.J., MacMahon, J.] [May 14.

WHITEWOOD *v.* WHITEWOOD.

Payment into Court--Infant's fund—Trustee—Discretion—Costs—Taxation—Interlocutory motion—Affidavits.

The defendant, having in her hands a fund to the benefit of which the plaintiff, an infant, was entitled, asserted that, by the terms of the trust upon which she held it, she had a discretion as to the application of it for the benefit of the plaintiff. She nevertheless paid the money into a bank to her own credit as trustee for the plaintiff and agreed that she would not use it except for his benefit, and would pay it to him at majority.

Held, that the defendant was a mere trustee for the plaintiff, without the discretion which she contended for; and a summary order, (made before delivery of statement of claim in an action to recover the fund and for an injunction) requiring the defendant to pay the fund into Court, and thereupon perpetually staying the action, was affirmed.

In re Humphries, *Mortimer* v. *Humphries*, 18 P.R. 289, approved.

Where an interlocutory motion was dismissed upon preliminary objections ;—

Held, that the taxing officer had a discretion to disallow to the party opposing it the costs of affidavits filed in answer to it.

Eyre, for plaintiff. *Carey*, for defendant.

Boyd, C., Robertson, J., Meredith, J.] [May 14.

WAKEFIELD *v.* WAKEFIELD.

Tenant for life—Renewal of lease—Carrying on business on premises—Profits—Account.

A widow was entitled under her husband's will to the use and enjoyment of all his property during her life. It was conceded that she was entitled to the enjoyment in specie of the personal estate. The testator owned a brick-field on leasehold land, which was a going concern at the time of his death. This and the plant in connection therewith the tenant for life took possession of, and went on with the working of it. She put other assets of the estate into this business and extended it, and when she died it was still a going concern. At the expiration of the term of her husband's lease, she obtained a new one, covering a larger area of land.

Held, MEREDITH, J., dissenting, that the widow, having elected to carry on the business on these premises, did so for the ultimate benefit of the estate. She was entitled to all the income, earnings and profits derivable therefrom each year, in so far as she applied them to the maintenance of the family, or in the acquisition of other property, or in the paying off of mortgages; but whatever profits went into the business to increase it, and whatever plant, stock, and belongings of the business remained on the