between the next friend and the defendant, the former was liable for costs so long as she did not make a direct application against the solicitors, no order could be made in favor of the defendant; but the next friend was entitled to be indemnified by the solicitors for costs incurred after her letter.

Held, also, that it was competent for the defendant to move to stay the proceedings, although the normal practice is for the next friend to move.

Shilton for the defendant.

Moss, Q.C., and *F. A. Anglin*, for the plaintiff's solicitors.

DONAHUE *v.* JOHNSTON.

Discovery—Production of documents—Privilege—Letters.

Letters written by the defendant to a third person, who was a principal in the transactions out of which the action arose, and letters written by such third person to the defendant,

Held, privileged from production in the action, where it appeared that they were written after the plaintiff had threatened litigation, and in consequence of the advice of the defendant's solicitor, in the endeavor on the part of the defendant to obtain information for the purposes of the threatened litigation.

Walter Read for the plaintiff.

John MacGregor for the defendant.

FINKLE *v.* LUTZ.

Laches—Nine years' delay in prosecuting action—Leave to proceed—Terms.

An action by solicitors to recover the amount of a bill of costs was begun and the defendant appeared in February, 1883. No further step was taken until February, 1892, when the plaintiffs delivered a statement of claim. The plaintiffs' reason for the delay was that the defendant had no means to pay during the period of delay.

Upon motion by the defendant to dismiss and cross-motion by the plaintiffs to validate the delivery of the statement of claim,

Held, that the action should be allowed to proceed.

Terms imposed upon the plaintiffs.

H. S. Osler for the plaintiffs.

R. O. McCulloch for the defendant.

DUNNET *v.* HARRIS.

Summary judgment—Rule 739—Leave to defend—Making defence appear—Payment into court.

Where no defence has been made to appear upon a motion for judgment under Rule 739, the defendant will not be allowed to defend unconditionally.

In an action for the price of goods sold and delivered to a partnership, bought after the dissolution thereof, against the two members of the partnership, one of them set up as a defence upon a motion for judgment that upon the dissolution he retired and his co-partner agreed to continue the business and pay the debts, including that of the plaintiff's, and that the plaintiff had taken securities from the co-partner after the dissolution and given him time, and so had relieved the other; but all those who knew of the dealings negatived any such course of dealing, and showed that all that was done was with a reservation of rights against the retiring partner.

Held, that the latter could not succeed in the action unless the jury disbelieved all this evidence; and he should be allowed to defend only upon payment into court of the amount claimed.

Akers for the plaintiffs.

H. Cassels for the defendant A. D. Harris.

[March 25.

HARRISON *v.* HARRISON.

Partnership—Execution against individual partner—Sale of share.

Under an execution against an individual partner the sheriff can seize the partnership goods and sell the execution debtor's share, whatever may be the difficulties which arise thereafter, and the Judicature Act has made no difference in this respect.

W. R. Smyth for the plaintiff.

MR. WINCHESTER.] [March 26.

MCGILL *v.* MCDONELL.

Jury notice—Action to establish will, etc.—R.S.O., c. 44, s. 77—Notice of trial by defendant—Rule 654—Notice of motion for judgment.

An action for an injunction, and to establish a will, and for the construction of the will and