

paid, including the sum of \$10 a week, which is to be charged as wages to G., this arrangement to continue until the first day of January, 1889, and to be continued thereafter if desired by Mr. W. The said W. reserving a claim upon instruments in the store to the value of \$500, and he can also at any time demand the said sum upon giving one month's notice, in which case this agreement would be at an end."

W. made a subsequent advance of \$500 to G., and on the 14th. April, 1888, a receipt was given for such advance containing an agreement to pay, "over and above the agreement of 13th February, interest at the rate of eight per cent. per annum."

This receipt was at the request of W. signed "P. W. G. & Co., P. W. G., sole partner of said firm."

Held, that these documents did not establish that the business was the joint business of G. and W., or that they were carrying it on as principals or agents for each other; but that they did establish that the true relation was that of debtor and creditor, and W. was therefore not liable to the plaintiffs.

R. S. Neville for plaintiffs.

Coatsworth for defendant West.

BOYD, C.]

[March 14.

SPRATT v. WILSON.

Trusts and trustees—Investment of moneys left to infants by will—Deposit in savings bank—Liability of trustees for legal interest—Acquiescence of statutory guardian of infants—Costs.

Where moneys are left by will to be invested at the discretion of the executor or trustee, the discretion so given cannot be exercised otherwise than according to law, and does not warrant an investment in personal securities or securities not sanctioned by the court. And

Held, that an executor and trustee who deposited funds so left in trust for infants at three and a half or four per cent. interest in a savings bank did not conform to his duty; and his failure to do so exposed him to pay the legal rate of interest for the money, although he acted innocently and honestly; and the acquiescence of the statutory guardian of the infants not being for their benefit did not relieve him.

Held, also, that the defendant was not en-

titled to costs out of the fund, but that he should be relieved from paying costs.

Bicknell for the plaintiffs.

H. H. Robertson for the defendant.

Chancery Division.

ROBERTSON, J.]

[Feb. 19.

BLACKLEY v. KENNY *et al.*

Mortgage to secure future advances—Voluntary conveyance—Subsequent advances—Renewal notes—Land held in suretyship—Giving time—Release—Assignment for benefit of creditors—Trustee representing estate—Proof of judgment in Court of Appeal—Evidence.

A. being indebted to a firm of which B. was a member, in January, 1883, gave him a mortgage as trustee for the firm to secure his indebtedness and all future advances. In September, 1884, A., with the advice and concurrence of B., conveyed the mortgaged property to his wife, subject to the mortgage, which he covenanted to pay off, the mortgage debt being then represented by ten promissory notes. As the notes respectively became due they were retired by B.'s firm from the bank where they had been discounted, payments were made thereon by A., further goods were supplied to him, renewals taken for the balances due, and the old notes were cancelled and given up to A. until the whole ten were thus disposed of. The wife was not consulted about this course of business, nor were any remedies reserved against her.

Held, that this was not payment of the original notes by A., but that as the wife was a surety in respect of the land for the due payment of the notes existing at the time of the conveyance to her, the land in her hands was discharged and released.

Held, also, following *Blackley v. Kenny*, 16 A.R., 522, that B. could not charge against the land any advances made after notice of conveyance to the wife.

Plaintiff set up that, in another action of F. as assignee and T. B. & Co. as judgment creditors against these defendants (16 A.R., 276), the conveyance to the wife had been held fraudulent and void as against creditors, and that, although his firm's security might be gone under the mortgage, they had proved their claim as creditors, and were entitled to participate *pro*