

ment had been obtained, but to plaintiff Nan O'Reilly, as administratrix of her father's estate, and to Mary Sullivan, as executrix of her brother.

The garnishee, in person.

THE MASTER.—No caution was registered against the lands under the Devolution of Estates Act. The plaintiffs, by bringing the action in their own names, instead of in the name of the administratrix, asserted that the land vested in them as heirs under sec. 13, although the administratrix assumed to make a lease to the tenant (garnishee). This she apparently did for the benefit of the heirs, without any legal authority. The rent was due to plaintiffs as heirs of their father, and to plaintiff Mary Sullivan as executrix of her brother. Order made for payment of \$3 out of the \$155 to the garnishee for costs, and of the balance to the judgment creditor.

Moss, J.A.

NOVEMBER 6TH, 1902.

C. A.-CHAMBERS.

MINERVA MFG. CO. v. ROCHE.

Court of Appeal—Leave to Appeal—Question of Costs Dealt with on Facts.

Motion by defendants for leave to appeal from the order of a Divisional Court (ante 530) upon a question as to the scale of costs.

W. E. Middleton, for defendants.

A. C. McMaster, for plaintiffs.

Moss, J.A.—No case was shewn for permitting a further appeal. The case was dealt with by the Court below as one turning on the particular facts. The pleadings shew that plaintiffs were relying upon the letter or undertaking given on behalf of defendants on the 21st November, 1901, rather than upon the original arrangement for purchase, and that the defendants so understood it and shaped their defence accordingly. On the question of fact as to the nature of the original arrangement, the Court below accepted the plaintiffs' version. The previous decisions have been left untouched by the judgments in this case. They have created no precedent in law, and leave to appeal on the question of fact should not be given. Application refused.