R. A. Harrison, on behalf of the demandant, having filed an affidavit showing the foregoing facts, made application for an order that unless the infant tenants should plead by guardian within three days after service of the order, demandant should be at liberty to assign John Doe for their guardian, enter judgment for default of a plea, and take all other necessary proceedings in the cause.

Mr. Harrison, in support of his application, cited 2 Chit. Arch. 9 Ed. 1170, and cases there noted.

McLEAN, C. J., on 31st December last, made the order as follows: "Upon reading the affidavits and paper filed, I do order that unless the above named infant tenants shall plead in this cause (by guardian) within three days after service hereof, the demandant may assign John Doe for guardian of the infant tenants, William Blanshard and Mary Jane Potter, and enter judgment thereon for default of a plea, and take all necessary proceedings in this cause in the ordinary way."

The order was served on 2nd January, 1863.

After the expiration of the three days limited by the order, *John Paterson*, upon an affidavit of the service of the order and of search for plea, and no plea filed, applied for an order absolute.

DRAPER, C. J., made the order absolute. It was in the following form: "Upon reading the order made in this cause on 31st December last, by the Honourable Archibald McLean, Chief Justice of Upper Canada, that unless, &c. (reciting order of McLean, C. J.), and upon reading the affidavit of service thereof, and an affidavit that no plea has been pleaded by said infant tenants, I do order that the above named demandant may assign John Doe for guardian of the infant tenants, William Blanshard and Mary Jane Potter, and enter judgment thereon for default of a plea, and take all necessary proceedings in the cause, in the ordinary way."

COBOURG FALL ASSIZES.

CHIEF JUSTICE DRAPER Presiding.

(*Reported by* THOMAS MOSS, Esq., M.A., *Barrister-at-Law.*)

HUTCHESON (Judgment Creditor) v. ALLEN (Garnishee) WILMOT ET AL (Judgment Debtors).

Held, the judgment debtor admissible as a witness on behalf of the plaintiff in an action under a garnishee order.

This was a garnishee action brought by the plaintiff, a judgment creditor, to recover the amount of a debt alleged to be due from the garnishee to the judgment debtors, under the usual order for the issue of a writ.

Wilmot, one of the judgment debtors was tendered as a witness on behalf of the plaintiffs.

Cameron, Q. C., acting for defendant (the garnishee) objected.

The learned JUDGE, considering the evidence admissible, overruled the objection.

The verdict was for the defendant.

ENGLISH REPORTS.

(*From the Law Times Reports.*)

RIDGWAY v. WEBBER AND ALGAR.

Costs—Taxation—Striking out co-defts.—C. L. P. A. 1852—15 *&* 16 *Vict. c.* 76, *s.* 37.

The same rule prevails on taxation of costs in actions of contract where the name of a co-deft. is struck out by the judge at the trial, as prevails in actions of tort where the verdict is in favour of one of two co-defts. and against the other; that is to say, the party exonerated from liability is entitled to a moiety of the costs. [Nov. 8 and 11.]

This was an action on a contract brought against the defendants as co-owners of a ship. The cause was tried before Blackburn, J., at Exeter spring assizes. At the close of the plaintiff's case the judge suggested that there was no evidence of authority in the defendant Algar to bind his co-partner. He allowed the name of the defendant Webber to be struck out, and the action then proceeded, and a verdict was given against Algar for £113. When the costs came to be taxed it was found that nothing appeared on the record as to the striking out of the name of Webber. Application was then made to a judge at chambers, and Blackburn, J., made an order under the C. L. P. A., 16 & 16 Vic. c. 76, s. 37, that the name of Webber be struck out of the record. The judge's order was in general terms, and did not specify the course as to costs. On taxation the master allowed the defendant Webber one-half of the costs.

Karslake now moved for a rule to show cause why the order of Blackburn, J., should not be amended, and why the master should not be directed to review his taxation. The question arises on what principle the costs should in this instance be taxed. The master having allowed Webber one-half of the costs of the defence, the plaintiff, who has succeeded against the other defendant, only gets one-half of his costs, the defendant Webber taking the other. The question is, whether that is, under the statute, the proper principle for the taxation. [WILLIAMS, J.—Both are liable, as between attorney and client, for the whole costs.] Yes. The effect at present is, that instead of getting the full costs from Algar, who defended the action, and against whom he succeeded, the plaintiff gets only half the costs from him.

ERLE, C. J.—If there is an established practice in such cases, we will not disturb it; if there is not, we will consider and settle the principle on which costs in similar cases should be taxed. We will inquire of the other courts.

ERLE, C. J., now delivered the judgment of the court.—This was a rule moved for by Mr. Karslake, to review taxation. On the suggestion of the judge, judgment was to be entered for one of the defendants, and the case was to proceed against the other of the defendants. One of the defendants being, therefore, exonerated from liability by the interference of the judge, under the C. L. P. A., the question was, what was the principle on which the costs of the defendant were to be taxed? The master proceeded on this principle. He considered what was the sum total of costs to be paid by the defendant, and divided the same. He considered the defendant who was exonerated from liability was entitled to a moiety of the costs which would have been due if both the defendants had succeeded. It was contended by Mr. Karslake that the costs of the plaintiff would be just the same, and the costs of the other defendant were not altered at all by this proceeding. We find there has been one understood and undisturbed rule of practice. In such a case as stated, the same principle was adopted as in an action of tort, where the verdict was in favour of one defendant and not the other. That is the principle upon which the masters have estimated the costs. They have treated it by analogy in actions of contract, where the case goes not against the first defendant; and, as at present advised, the court being informed by the master that this has not been disturbed, and the court not being aware of any better principle than that, they say, *primâ facie*, they will assume that the master is right. That may not be the case where the rule should not be carried out in utter strictness, and where the circumstances of the case require a variation. In the present case there are no circumstances brought forward that require variation, and the rule will be refused. Rule refused.

UNITED STATES REPORTS.

QUARTER SESSION CASES.

COMMONWEALTH v. LOWRY.

1. It is wrong for a party to commence a criminal prosecution against his adversary in a civil suit, for a supposed perjury committed in some collateral proceeding, during its pendency and before its termination.
2. When one is charged with a criminal offence, complaint should be made to a magistrate, who issues his warrant upon which the accused is arrested, and has a preliminary examination, and is bailed, or committed in default thereof or discharged.
3. This practice has been uniform since the organization of the Commonwealth, and what time and usage has thus matured should be regarded as a fundamental right.
4. The law is jealous for the reputation and protection of the citizen, and will not needlessly subject him to the severe ordeal of judicial investigation for an alleged offence, on the first imputation of it, when a more mild, less exposed and less expensive one will answer as well.