the practice in each division differed. The C.P. and Q.B. Divisions required the names of the partners to be given.

[LORD COLERIDGE, C. J.—Order 55 r. 2. is taken from the C. L. Proc. Act 1854, and in each section the word "garnishee" is used in the singular number.]

It is submitted it was the intention of the Judicature Act to include "firms" under the words "any other person," and to allow service of garnishee orders on the firms in the same way as service of writs.

Per CURIAM.—The decision of the Master was right, and must be affirmed.

[*Imp. O. 45 1, 2, and Ont. O. 41, 1, 5 (No. 370) differ slightly, but not so as to affect the point here decided. Under our order the affidavit in support need not be sworn by the judgment creditor or his solicitor.*]

RUDOW V. THE GREAT BRITAIN MUTUAL LIFE ASSOCIATION SOCIETY.

Costs—Formal Party.

C. of A., April 26——50 L. J. R. 504. 44 L. T. 688.

JESSEL, M. R.:—The proper practice now is, not, according to the old practice, to direct a plaintiff to pay the costs of a necessary but formal defendant, and to have them over again against the principal defendant, but to pay such a defendant his costs by a direct order. Both the Lords Justices now sitting with me agree with me that that is now the proper practice.

[NOTE.—*The principal point in the above case concerned the interpretation of certain clauses of the Companies' Act*, 1862, *but the above observations appear worthy of note.*]

ELLIS V. ROBBINS.

Imp. O. 37, r. 1; O. 40, r. 1—Ont. O. 32, r. 1, No. 282; O. 36, r. 1, No. 315—Practice—Motion for judgment—Evidence by affidavit.

On motion for judgment the Court has no power, under Rules of Court, to order that the evidence shall be taken by affidavit.

[Ch. D. April 28——50 L. J. R. 512.

This was an action for the purpose of rectifying a mistake in a settlement, made by the plaintiff on the occasion of his daughter's marriage. The trustees of the settlement, the plaintiff's daughter and her husband, and their infant child were defendants. A statement of claim was delivered, but no statement of defence were put in, the action being in effect a consent action, and it being conceded that there had been a mistake which ought to be rectified as asked by the statement of claim.

Evidence by affidavit had been given in support of the allegations contained in the statement of claim, and the action had been set down on motion for judgment.

On the action coming on for hearing,

Graham Hastings and *Whately* submitted the question to the Court, whether the Court had power in motion for judgment to accept evidence by affidavit, so as to make a judgment in default of pleading, which would be binding on the married woman and infant defendants. They pointed out that Order 37, r. 1., giving power to the Court to order the evidence to be taken by affidavit, relates only to the trial or hearing of an action, while Order 40, which relates to motion for judgment, is silent on the subject of giving evidence by affidavit.

H. N. Rooper, for the defendants.

HALL, V. C., gave judgment for rectification of the settlement, but directed that notice of trial should be given to the defendants, the infant and married woman, and that the motion should be placed in the paper again on the application of any party *pro forma*, in order to be disposed of.

[NOTE.—*Imp. O. 37, r. 1, and Ont. O. 32, r 1 (No. 282), are virtually identical. Imp. O. 40, r. 1, and Ont. 35, r. 1 (No. 315) are identical.*

ROBINSON V. PICKERING.

Imp. Jud. Act, 1873, *sec. 25, s. s.* 8—*Ont. Jud. Act, sec.* 17, *s. s.* 8—*Married woman—Separate estate—Injunction to restrain dealing with*

The Court will not, in an action by a creditor who has dealt with a married woman on the faith of her separate estate, grant an injunction to restrain her from parting with that estate until the creditor has established his right by obtaining judgment.

[C. of A. February 23——10 L. J. R. 527:

This was an appeal from a decision of Malins,