Armour, C.J., Falconbridge, J., Street, J.] [Feb. 9.

JOHNSTON *v.* DULMAGE.

Bankruptcy and insolvency — Assignee for benefit of creditors—Costs of action brought by—Remuneration and disbursements of—Liability of creditors—Indemnity.

An assignee for the benefit of creditors, under the Assignments Act, cannot charge creditors personally with the costs of an action brought by him on behalf of the insolvent estate, unless upon a direct or implied promise of indemnity, but must look to the assets of the estate; and so, too, with regard to his remuneration for and disbursements in winding up the estate.

Walkem, Q.C., for plaintiff. *Aylesworth*, Q.C., and *Deroche*, Q.C., for defendants.

Rose, J.] RANDALL *v.* ATKINSON. [Feb. 13.

Evidence—Admissibility—Death of witness before cross-examination.

Held, upon a review of the authorities, that the depositions of the defendant taken on his own behalf upon a reference were admissible in evidence, notwitstanding that he had died, pending an adjournment of the reference, prior to cross-examination, so that the plaintiff had been deprived of the opportunity of cross-examining him.

Wallace Nesbitt, for defendant by revivor. *W. M. Douglas*, for plaintiff.

Meredith, C.J., MacMahon, J.] [Feb. 20.

CLIFTON *v.* CRAWFORD.

Parties — Action against executor for legacy—Person to whom legacy paid.

A testator gave legacies to three grandchildren, to be paid at majority or marriage, and provided: "In case of the death of any one of my said grandchildren, the bequests . . . shall be divided among and go to the survivor or survivors of them, share and share alike." All three survived the testator, but two died before marriage or majority, and the executor paid all three legacies to the survivor. The plaintiff, the personal representative of the grandchild who was the second to die, brought this action against the executor to recover one-half of the legacy of the grandchild who died first.

Held, that, as a determination of the proper construction of the will was necessary to entitle the plaintiff to succeed, it was not an improper exercise of discretion to require the surviving grandchild, or his representative, to be added as a party, so as to prevent an adjudication being had as to his rights under the will, behind his back, and to have the question decided in one action. *Cornell* v. *Smith*, 14 P.R. 275, referred to.

J. E. Cook, for plaintiff. *Justin*, for defendant.