money which he did not hand over for a long time; that on passing H.'s accounts the Master referred to the taxing officer for moderation of D.'s bill of costs, and refused to allow C. B. to appear on the inquiry; that at the procurement of D. another solicitor was appointed to represent H.; that he did not oppose the allowance of many objectionable items, and that H. had received sums of money for which he had not accounted, and prayed that the accounts and bill of costs might be opened up and that the defendants might be ordered to pay into Court such sums as may have been overpaid or wrongly allowed.

The proceedings in which the costs complained of were incurred had not been sanctioned by the Court, and were undertaken by H. upon his own responsibility.

Held, that an administrator *pendente lite* is amenable by a suit in equity and that H. was liable to account to the plaintiffs.

Held, also that the plaintiffs were right in not having proceeded by petition in the suit of *Wilson* v. *Wilson* in which J. W. was not a party, and C. B., though a party, did not represent the beneficiaries under the will first.

Held, also that the bill must be dismissed as against D., for if H. had improperly paid him costs out of the estate, H. was liable and there was no privity between D. and the plaintiffs.

Maclennan, Q. C., and *Haverson*, for the appellant.

Spencer, for defendant Donovan.

Donovan, for defendant Haldane.

From C.P.]

Austin v. Gibson.

Principal and surety—Giving time to principal—Discharge of surety.

The testator, who was surety in a covenant for the payment by the defendant, Scott, of a sum of money, died, leaving a will by which he appointed Scott and the other two defendants executors. After his death, Scott, on his own behalf, made various payments on account of the debt, and being unable to pay the balance, some $1,152, when due, he got the plaintiff to take his promissory note therefor payable in three months, Scott having arranged with his bankers to discount this note on which plaintiff got the money. When the note matured, part of the amount was paid by Scott and the balance renewed by another note of Scott's endorsed by the plaintiff as before, the last renewal being for $618, which amount the plaintiff sought to recover in this action against the defendant as executor in the deed of suretyship. In the dealings between plaintiff and Scott as to the promissory note and various renewals, no reference was made to the estate of the surety nor to the deed—and the co-executors of Scott had no knowledge or notice of such dealings.

Held, affirming the judgment of the Common Pleas, that the dealing between plaintiff and Scott had the effect of releasing the liability of the estate of the surety—notwithstanding that Scott was at the time of such dealing one of the executors of the surety.

Spencer for the appellant.

MacKelcan, Q.C., for the respondent.

Appeal dismissed.

From Q. B.]

Rooney v. Rooney.

Trinity Term—Sittings of the Court dispensed with—When rules nisi to be made—Power of Court.

Held, affirming the judgment of the Common Pleas, that when the Court has dispensed with its sittings during Trinity Term, motions for new trials in cases, tried at the summer assizes at Toronto, need not necessarily be made during the first four days of Trinity Term, as under section 13 of R. S. O. c. 39., unless judgment has been entered, such a motion may be made at any time during vacation (which includes Trinity Term) to a single Judge sitting for the Court.

McMichael, Q.C., for the appellant.

Haverson, for the respondent.

Appeal dismissed.
