the cases show that a man is not liable for the repetition of slander by some one else. . . Here I cannot see how Marescaux caused the damage. It is said in the plaintiff's affidavit that the slander complained of was intended to be transmitted to England, but I cannot see how this was intended by Marescaux. The plaintiff, therefore, is in the dilemma which I have pointed out. If it is necessary to distinguish the present case from the *Great Australian Gold Mining Co.* v. *Martin*, L. R. 5 Ch. D. 1, that case is distinguishable by the affidavit which was used, and which stated that the secretary of the company was informed and believed that the defendant made in England certain representations whereby the plaintiff company was induced to issue debentures and shares, and incur expenses in England. (L. R. 5 Ch. D. 18). For these reasons I am of opinion that the application must be refused.

BRETT, L. J.:—I am of the same opinion for the same reasons.

COTTON, L. J.:—I have nothing to add.

[NOTE.—*Imp. O.* 11, *r.* 1 *and Ont. O.* 7, *r.* 1, *are virtually identical.*]

DYER V. PAINTER.

Imp. O. 50, *r.* 3—*Ont. O.* 44, *r.* 2, *No.* 384.

[Ch. D. June 24.—W. R. 105.

Upon the death of the plaintiff in an administration action, his widow and executrix, who has thereby become entitled absolutely to her husband's share in the testator's estate, is entitled to carry on and prosecute the action and the proceedings thereon in like manner as the deceased plaintiff might have done if he had not died, by obtaining an order of course at the Rolls, without the necessity of a special application at the chambers of the judge in whose Court the action is pending.

[NOTE.—*Imp. O.* 50, *r.* 3, *and Ont. O.* 44, *r.* 2, *are identical.*]

WILLMOTT V. BARBER.

[Ch. D. June 24.—W. N. 107.

Imp. O. 55—*Ont. O.* 50, *r.* 1, *No.* 428.

Practice—Costs—Discretion of Judge—Costs by way of penalty.

In this case, which is reported 15 Ch. D. 96, an action had been brought for specific performance of an agreement for the sale of land, and the defendant, who was the vendor, brought a counterclaim charging the plaintiff with acts of trespass and waste. Mr. Justice Fry thought that the plaintiff had failed in his claim, and that the defendant had also failed in his counterclaim, and made an order dismissing the claim without costs; and also dismissing the counterclaim, and ordering that the defendant should pay the costs of the counterclaim, and that if the costs of the counterclaim should exceed half the whole costs of the claim and counterclaim the defendant should pay the plaintiff the excess.

The defendant appealed from the latter part of the judgment.

Bagnold (*North*, Q. C., with him), for the appellant, objected to the order as to costs as being beyond the jurisdiction of the judge. He had dismissed the claim without costs, and then had ordered the defendant to pay some costs beyond the costs of the counterclaim by way of penalty.

Cookson, Q. C., and *T. A. Roberts*, for the plaintiff.

JESSEL, M. R., said that no doubt a judge could not impose costs beyond the costs of the suit by way of penalty. But the order was only wrong in form. What the judge meant to do was to order the defendant to pay half the whole costs of the claim and counterclaim, and he had full power to do that. The order should have been that the claim be dismissed without costs except as thereafter declared, and then a declaration that the defendant should pay half the costs of the claim and counterclaim.

BAGGALLAY and LUSH, L.JJ., concurred.

REAL AND PERSONAL ADVANCE COMPANY V MCCARTHY.

Costs—Defendant—Withdrawal of defence—Costs "so far as they were occasioned by defence."

[Ch. D. July 29.—D. N. 109.

In this case Fry, J., allowed a defendant to withdraw his defence and ordered him to pay the plaintiffs their costs of the action so far as occasioned by his defence (14 Ch. D. 188). The taxing-master in taxing the costs under this