

is a motion to be dealt with in Chambers. The order for a new trial which was made to this Court had nothing to do with the question whether the defendant is entitled by what has happened subsequently to have the action dismissed. If the Master has power to dismiss the action, or to let the action go on, his exercise of it will not interfere in any way with the order of this Court."

The editor of this series of reports, in a note to the case, expressed this opinion: "Before the Judicature Acts, if the plaintiff did not proceed to trial after a rule for a new trial had been made absolute, the defendant could not have judgment for not proceeding to trial (see *Day v. Day*, 1 M. & W. 39, 5 L. J. Exch. 142, 4 D. P. C. 740; *King v. Pippett*, 1 T. R. 492; *Earl of Harborough v. Shardlow*, 8 M. & W. 265, 10 L. J. Exch. 245); and it would seem that this has not been altered by the Judicature Acts or Rules, and that the defendant's only course is, if he desires a judgment to be entered, to himself give notice of trial."

I think, apart from authority, that is the conclusion to which I should have arrived, because the plain reading of the section leads to this conclusion, that when once the plaintiff has complied with the Rule, the 6 weeks having elapsed, by setting the case down for trial and proceeding to trial, the Rule no longer has application.

The provision which I have read is that where the pleadings are closed 6 weeks, or, to paraphrase the Rule, it is: After the pleadings are closed 6 weeks, the plaintiff is bound to bring his case down to trial at the first sittings at which it can be tried according to the practice of the Court.

The plaintiffs here did that, and when they had done it, it seems to me the operation of the Rule as to the case is exhausted.

I may refer to another Irish case, which is mentioned in *Drummond and Smith's Judicature Acts, Ireland*, p. 442, where it is said: "In *Joyce-Townsley Company v. Boyle*, the action having gone to trial at nisi prius, the jury disagreed. The plaintiff not having served a second notice of trial, the defendant moved, before the Exchequer Division, for an order to dismiss the action for want of prosecution, and the application was refused with costs. The defendant appealed from this order, and the Court of Appeal affirmed the decision of the Exchequer Division. This decision puts