

defendant. The daughter was in very bad health and could not attend for examination for discovery. On application her name as a plaintiff was struck out, and an order was made for her examination *de bene esse* as a witness on her father's behalf. Before her examination could be taken, she died on the 8th instant.

The plaintiff thereupon wrote on the 13th instant to the defendant's solicitor that he thought it better to drop the action.

No arrangement was reached by the solicitors, and on the 21st instant a motion was made by the plaintiff for leave to discontinue the action without costs. This was argued along with a motion by the defendant to dismiss for want of prosecution.

F. J. Roche, for plaintiff.

E. H. Cleaver, Burlington, for defendant.

THE MASTER.— . . . Under all the facts of this case, it does not seem that the plaintiff's offer to have the action dismissed without costs is unreasonable. If this cannot be done, I would have to make the usual order allowing the plaintiff to go to trial at the next sittings at Milton. The plaintiff's counsel on the argument stated that there was some other evidence which they might have to give if the defendant forced on a trial. I cannot think that the interests of the defendant will be in any way advanced by this. In the circumstances of this case I think that justice will be done by dismissing the action without costs (including costs of these motions).

The defendant has denied the charges made against him on oath and has not been examined for discovery. So he has all the vindication he could obtain if the action went down to trial.

I refer to sec. 72 of the Judicature Act, and *Snelling v. Pulling*, 29 Ch. D. 85, as shewing that I have discretion as to the costs.

MACLAREN, J.A.

OCTOBER 27TH, 1903.

CHAMBERS.

ATKINSON v. PLIMPTON.

*Writ of Summons—Service out of Jurisdiction—Order Permitting—
Motion to Set Aside—Action for Price of Goods Sold—Sale by
Sample—Return of Goods—Copyright—Discretion as to Forum.*

Appeal by defendants from order of Master in Chambers, ante 827, dismissing motion by defendants to set aside an