

Their Lordships' judgment was delivered by

HON. MR. JUSTICE HODGINS:—The authority for the order of the Master-in-Chambers made on the 5th day of October, 1912, is found in old rule 430, sub-sec. 4. The order, clause 3, provides that "this order shall be a bar to the continuance of this action and to any future action which may be brought by the plaintiff for the same cause of action."

Obviously, I think, the word "action" in the order must be construed as it is defined by the Rules under which alone the order could be made; and, if so, it is equally clear that it does not include a proceeding under the Land Titles Act.

It is to this point that the judgment of my brother Latchford is directed and it appears to be the only one argued before him.

The effect to be given in the proceedings before the Master of Titles to the order in question is of course a matter for him to decide and I agree with his decision so far as it deals with the meaning of the order. It is provided in Rule 430, sub-sec. 3, that a discontinuance under sub-sec. 1, i.e., before receipt of the statement of defence or after the receipt thereof but and before any other proceeding in the action is taken by the plaintiffs, shall not be a defence to any subsequent action. This means that by that sort of discontinuance there is not established any foundation for a plea of *res judicata*. But where the plaintiff has to apply for leave, the Court or a Judge has power to direct that the order shall be a bar to any future action. This is exactly equivalent in effect to a judgment under such circumstances as entitle the defendant to allege that the matter in question has passed into judgment binding both parties. For if it is not a bar in that sense, it is no bar at all. The effect of the order is well illustrated by Lord Herschell's remark in *Owners of Cargo of Kronprinz v. Owners of Kronprinz* (1887), 12 A. C. at p. 262. "The Judge's order to discontinue—unless it were made a condition of the discontinuance that no other action should be brought—would not operate as a bar."

It is quite true that the bar is against a subsequent "action" but I take it that the effect of the exercise of the Judge's power thus expressed, is to enable the issue of *res judicata* to be effectively raised in other proceedings if they involve the same parties and the same issue.