

Shortly after this defendants went out of business, and nothing more was done by either side until November, 1904, when defendants' solicitor wrote to plaintiff's solicitor that he must discontinue, or else that defendants would be obliged to move to dismiss.

No result seems to have been attained, and on 11th May, 1905, defendants' solicitor wrote again to same effect. Four days later he gave the usual notice of motion to dismiss, and on 31st May that motion was dismissed, on "plaintiff by his solicitor undertaking to go down to trial at the next non-jury sittings at Toronto."

Notwithstanding this the action still lay dormant until 19th June last, when defendants' solicitor again wrote to same effect as his letter of 11th May, 1905. To this apparently no reply was sent, and on 26th June another motion to dismiss was launched.

This was adjourned until after vacation and was argued on 25th September.

J. R. Roaf, for defendants.

G. H. Kilmer, for plaintiff.

THE MASTER:—Plaintiff was willing to have the action dismissed without costs. It was argued on his behalf that he was entitled to have his costs up to the time when defendants ceased to do business, though he was prepared to forego his strict rights. He relied on *Knickerbocker v. Ratz*, 16 P. R. 193, and on *Eastwood v. Henderson*, 17 P. R. 578, a case which was followed by the Exchequer Division in *O'Sullivan v. Donovan*, 8 O. W. R. 319. If this was always the view of plaintiff's solicitor, it must have been by an oversight that he gave the undertaking to proceed as a term of the dismissal of the motion in May, 1905. This seems otherwise inconsistent with the contention that plaintiff should now be allowed to discontinue without costs, on the ground that he has gained his object and that the action is at an end. The principle on which such an order can properly be made is exemplified in *Armstrong v. Armstrong*, 9 O. L. R. 14, 4 O. W. R. 223, 301. If it was thought that plaintiff was entitled to such an order, a motion should have been made to that effect when the order of 31st May, 1905, was made. I have no recollection now of what took place