

was also set aside, and a third trial ordered in the Michaelmas sittings, 1883. The plaintiff not having served notice of trial for the next ensuing assizes, the defendant moved to dismiss the action for want of prosecution, contending that the case fell within G. O. XXXV., Rules 2, 4. The Court refused the motion. Semble, the only remedy open to a defendant under such circumstances is trial by proviso under the old practice."

It is quite clear that under the Common Law Procedure Act, which contained a somewhat similar provision, fixing the time, however, by so many terms, which was the method of computing time then, the defendant might give a notice requiring the plaintiff to proceed to trial,—give notice of trial within 20 days, in default of which judgment might be entered dismissing the action.

It was held in a number of cases while that Act was in force, and under the English Act which corresponded to it, that where the plaintiff had once taken his case down to trial and the verdict which was rendered had been set aside, the Rule did not apply to compel him, subject to the penalty of having his action dismissed, to proceed to trial at the next Court for which he could properly give notice of trial.

There is a case which at first sight would seem to be in favour of the view that the Rule is applicable.

I should have observed that the Rules are not precisely the same in Ireland, and that the provisions of the Common Law Procedure Act were still in force there, except in so far as they were varied by the Judicature Act, and to that extent the case differs from this.

The case of *Robarts v. French* is cited in *Holmsted and Langton's* book—a decision of the Court of Appeal. There there had been a trial, and a new trial had been ordered by the Court of Appeal. A motion was made to that Court to dismiss the action because the plaintiff had not proceeded to trial. The Court determined that it had no jurisdiction, and that the proper forum to which to apply was the Master in Chambers or a Judge in Chambers; but there is no opinion expressed at all as to whether the order could be made or whether the Rule could be invoked in a case of that kind. Indeed, Lord Justice Lindley, in the few remarks which he made at the close of the case, guards himself, I think, against any such view. He says: "I think there is no doubt that this