ment which has once been dismissed by the tribunal exercising the discretion we have been discussing.

Although that question has been several times raised (*w3*) in Ireland under a rule there similar to English Order XIV., and uniformly answered in the negative, the English practice on the point seems to be conflicting. Matthew, J., considered the question in an action (*w4*) wherein the writ was issued in April, 1883. A summons under the Order issued about a month later, and was dismissed by the Master. There was no appeal taken against the Master's decision. In August, 1883, the pleadings were closed; and in January, 1884, a second summons under the same Order was taken out. It was alleged in the plaintiffs' affidavit that they had just discovered a letter containing an admission. On behalf of defendant, it was argued that such an allegation did not enable the plaintiffs to make a fresh application: that there was no jurisdiction to hear the (second) summons, the dismissal of the first summons being conclusive. Matthew, J., allowed the second summons; and said: "The plaintiffs can make a second application on fresh materials. The Master who heard the first application only decided that a case for judgment was not made out on the then materials."

Cavanagh objected (*w5*) that the above quoted opinion of Matthew, J., is erroneous; and, as authority for his objection, referred to the doctrine of res judicata (*w6*) and cited Irish decisions (*w7*). It certainly does seem hard to reconcile the view of Matthew, J., with that expressed in the following words of one of superior jurisdiction (*w8*): "It is always necessary that parties should not be at liberty of their own accord to litigate their case again on fresh evidence. If a person litigates his case, he ought to come with such evidence as he thinks will prove it, and it would be perfectly wrong in principle to allow a man who has failed on the evidence which he thought was sufficient, and which he contended was sufficient to establish his title, on a fresh petition . . . and when he has found that a link was missing in the evidence, to come

(*w3*) *Keily* v. *Massey*, 6 L.R. Ir. 445; *French* v. *Mulcahy*, 8 L.R. Ir. 146.
(*w4*) *Wagstaff* v. *Jacobwitz*, W.N. (1884), 17.
(*w5*) Law of Summary Judgment, 90.
(*w6*) *Joynes* v. *Collinson*, 13 M. & W. 558; *Re May*, 25 Ch. D. 337; 25 Ch. D. 516, et al.
(*w7*) *Kiely* v. *Massey*, ubi sup; *French* v. *Mulcahy*, ubi sup.
(*w8*) Per Cotton L.J., L.R. 28 Ch. D. 520.