is not likely to gain any advantage from it if his opponent fail to attend. (Per Robinson, C. J., in *Steer* v. *Faulkner*, 15 U.C. Q.B. 116.)

If the party do not attend, the non-attendance does not of necessity entitle his opponent to judgment *pro confesso*. The court or judge before whom the cause is entered for trial, has a discretion in the matter, and may order that the non-attendance shall not have that effect. The statute provides that the non-attendance *shall* be taken as an admission *pro confesso*, &c., *unless* otherwise ordered by the court or judge in which or before whom such examination is pending. The court or judge, under the act, may, instead of allowing judgment *pro confesso*, postpone the proceedings on terms of payment of costs &c. Unless, however, otherwise ordered, a general finding of judgment may be had against the party absent, or the plaintiff, if the party, may be nonsuited. If no order to the contrary is made, the statute is imperative, as a consequence, that the case shall be taken *pro confesso* against the party failing to attend. It is however no ground for setting aside a verdict for the plaintiff, that he, though notified to attend, failed to do so, where he is not called at the trial, and where the counsel for defendant at the time of the trial is absent. (*Pegg et al.* v. *Plank*, 3 U.C. C.P. 396.) If the party failing to attend be the defendant, and the plaintiff's cause is of a specific determinate character, by the nature of the contract between the parties, and the defendant by his pleading admits the cause of action as stated, and only relies on proving it to be discharged and satisfied, it is not clear that the plaintiff has a right to stop the defendant's counsel from entering into his evidence and endeavoring to prove his plea. It may be asked, *cui bono*, to allow the defendant to go into his evidence, when, after it is concluded, no matter how clear the proof, the plaintiff would be entitled to a verdict *pro confesso*, because the defendant did not appear when called upon by the plaintiff to give evidence on the plaintiff's case in reply. This objection does not appear to be insuperable. The court or judge before whom the cause is tried has a discretion to exercise, and the exercise of that discretion might materially depend on what might, under the circumstances, be proved. (Per Draper, J., in *McGann* v. *Keyes*, 12 U.C. Q.B. 429.)

On general principles, the manner in which discretion is exercised by a judge on whom a discretionary power is imposed, is not subject to revision. The effect is analogous to that which takes place when a party loses costs, unless the judge certify. The statutes there determine the right of the party when the judge declines to certify, and so it may be argued that this statute settles the position of the parties, where the judge has not interposed to relieve against its imperative operation. "The court or judge in which or before whom such examination is pending," evidently means only the court or judge in which or before whom the party would have been examined if he had attended, not the court in which merely the action happens to be pending. This is an important point. It may happen that a party meaning to attend is prevented, from some good cause, which cannot be made to appear, when the suit is called. So it may happen that a party is really ignorant of the notice served on his attorney, and this possibly without any fault of the attorney, who may take the usual and proper means of sending information to his client, which by some accident fails. If the judge, having all the facts before him, takes, as may be afterwards thought, too rigorous a course at the trial, or if he decides quite reasonably upon the facts as they appear before him, but something is afterwards shown which wholly excuses the non-attendance, and would have led to a different course if known at the trial, can the court in *banc* in either case give relief by granting a new trial? The court would certainly pause before giving relief in the first case supposed, even if the power to do so were clear, but might feel compelled to grant a new trial in the second case supposed. (Per Robinson, C. J., in *McGann* v. *Keyes*, 12 U.C. B.B. 429.)

Suppose, however, that the party attends; suppose he is called and sworn as a witness, and examined by his opponent, must his cross-examination be restricted to his examination in chief? The Court of Queen's Bench (Burns, J., *dissentiente*) held the affirmative (see *Lamb* v. *Ward et al.*, 18 U.C. Q.B. 304), and the Court of Common Pleas unanimously held the negative. (*Dickson* v. *Finch*, H. T. 1861, M. S.) The question is one of the greatest importance, and unless at once settled by legislative declaration must lead to great inconvenience. The conflict of the two courts of co-ordinate jurisdiction enables each judge of either of the courts to follow his own conviction, and leaves judges of county courts to sit in judgment on, instead of following the decisions of the judges of the superior courts. Look at the actual effect of "this glorious uncertainty in the law." During the present spring, the judges of the superior courts are on circuit. A judge of the Queen's Bench is asked, in a Common Pleas cause, to rule that a party called by his opponent is a witness in the cause for all purposes, and declines; the party against whom he rules is certain to obtain a new trial, on the ground of rejection of evidence. So the reverse. A judge of the Common Pleas is asked, in a Queen's Bench cause, to rule that a party called by his opponent cannot be cross-examined except as to the subject matter of his examination in chief, and declines. The party against whom he rules must obtain a new trial, on the ground of rejection of evidence. So as to county judges. A county judge rules with the