

It is noteworthy, also, that any terms imposed should not restrict the defendant to particular lines of defence, so as to preclude him from bringing forward at the trial every "triable issue" he has to raise. On this point the remarks of Davey, L.J., on an appeal in an action (*w2*) brought against a defendant as acceptor of a bill of exchange might be referred to. The order of the Master referring that action to the Short Cause List under Order XIV., rule 8, provided that "this action is to be referred to the Short Cause List, the sole question being whether the plaintiff is the bona fide holder for value." It was admitted that the bill was overdue when the plaintiff took it; and the question before the judge was whether it was open to the defendant upon the Master's order to object that the plaintiff was not the holder in due course, and that he took the bill subject to all the equities attaching to it. The judge held that he could only go into the question whether the plaintiff was a bona fide holder for value; and gave judgment for plaintiff with costs. The defendant successfully appealed to the Court of Appeal. Davey, L.J., said in his judgment in the higher court: "He did not understand the Master's order as restricting the right of the defendant to make any such defences to the action as he could, but rather as explaining the reason why he thought it a proper case to go into the Short Cause List. If that was not the meaning of the order, he doubted whether the Master, having given leave to defend, could dictate to the defendant how he should restrict his defence."

Another branch of the enquiry concerning the exercise of the judicial discretion conferred by Order XIV. is the question as to what stage in the course of an action that discretion is validly exercisable.

It will be noticed that the Order contains no express provision on this subject. In a number of cases the motion for summary judgment was not made until after the delivery and close of the pleadings (*rrr*). Cavanagh stated, (1887), (*sss*) as a result of his researches, that there was only one reported English case (*ttt*) in which the decision was based on the stage of the action at which the application was made; and that, since the facts of the one case

(*w2*) *Langton v. Roberts*, 10 T.L.R. 492.

(*rrr*) *Hamner v. Flight*, 36 L.T. 276; *Wagstaff v. Jacobwitz*, W.N. (1884) 17.

(*sss*) Law of Summary Judgment, 86.

(*ttt*) *Fowler v. Lee*, W.N. (1876) 86.