

Collinson v. Jeffery, [1896] 1 Ch. 644, distinguished.
Appeal from order of Master in Chambers.

The defendants moved before the Master in Chambers to dismiss the action for want of prosecution, and on 5th October, 1901, he made an order directing that in default of plaintiffs, within 4 weeks, undertaking to bring the action for trial at Peterborough in December, 1901, and proceeding to trial then, that the action be dismissed with costs. On appeal MEREDITH, C.J., affirmed that order, and on further appeal, a Divisional Court affirmed his order, and refused to extend the time for trial or relieve plaintiffs from the consequences of failing to give the undertaking. Subsequently, defendants applied to the Master in Chambers for an order dismissing the action, and on 31st January, 1902, he made an order allowing plaintiffs to go to trial at Peterborough on 27th May next. The defendants appealed.

G. M. Macdonnell, K.C., for defendants.

W. E. Middleton, for plaintiffs.

MEREDITH, C.J.—At the expiration of the time allowed for giving the undertaking, the action was at an end: Whistler v. Hancock, 3 Q. B. D. 83; King v. Davenport, 4 Q. B. D. 402; Carter v. Stubbs, 6 Q. B. D. 116; Hollander v. Ffoulkes, 16 P. R. 225, though pending an appeal, but not afterwards, an order extending the time for trial might have been made: Carter v. Stubbs, *supra*, and the time, though it has expired, for appealing from such an order, may be extended: Carter v. Stubbs, *supra*, Burke v. Rooney, 4 C. P. D. 226.

In Collinson v. Jeffery, [1896] 1 Ch. 644, Kekewich, J., recognized that a different rule, from that which he had adopted, was applicable where the order was one dealing with the dismissal of an action for want of prosecution?

In Script Phonography Co. v. Gregg, 59 L. J. Ch. 406, North, J., treats Whistler v. Hancock, and King v. Davenport, *supra*, as settling the law.

Even if the Master in Chambers had jurisdiction to make his second order, it would have been improper to do so after the order of the Divisional Court.

Appeal allowed with costs, but motion dismissed without costs, because it was unnecessary.

Kilmer, Irving, & Porter, Toronto, solicitors for plaintiffs.

Macdonnell & Farrell, Kingston, solicitors for defendants.