THE MASTER.—Unless there is some essential difference between an order to dismiss for want of prosecution and the order made in this case, I think Mr. Kilmer's contention must prevail.

Now, I am unable to see any such difference. No doubt what was urged by the counsel for the plaintiffs before the Divisional Court puts the matter in a strong light; and the spirit of the Judicature Act is disregarded if "substantial justice is sacrificed to a wretched technicality." Here, however, the whole difficulty has arisen from the oversight of the solicitors, who could have obtained the necessary enlargement from Mr. Justice MacMahon or from the Divisional Court, had the matter been mentioned on either argument.

After all, the question is one of very little practical importance. It would have cost less to have begun a new action; and, as the Milton assizes are not earlier than the 7th November, there would have been and still is ample time to go to trial at those sittings.

Had there been any question of the intervention of the Statute of Limitations or any such state of facts as in Collinson v. Jeffery, [1896] 1 Ch. 644, I would feel much more difficulty in refusing what would seem reasonable, if there was any power to make the order asked for.

The motion must be dismissed with costs.

CARTWRIGHT, MASTER. SEPTEMBER 7TH, 1904.

CHAMBERS.

McBAIN v. WATERLOO MANUFACTURING CO.

Infant—Next Friend—Father out of Jurisdiction—Security for Costs—New Next Friend.

Motion by defendants to stay the action until the plaintiff should name a next friend in the jurisdiction or give security for costs. The plaintiff sued by his father as next friend; both resided in the Province of Quebec, as appeared by indorsement on the writ of summons.

D. L. McCarthy, for defendants.

J. E. Jones, for plaintiff.