

On turning, by way of introduction to that review, to a brief consideration of the history of the English legislation respecting summary judgment, in the hope of learning something of the general principles intended to govern the exercise of the judicial discretion conferred by Order XIV., it is found (*f*) that the procedure introduced by the Order was an extension of the principle embodied in "an Act to facilitate the remedies on Bills of Exchange and Promissory Notes by the prevention of frivolous or fictitious defences to actions thereon." The purport and scope of that Act (18 & 19 Vict., c. 67.) is shewn by its title, and by the reference in its preamble to "the unjust delay and expense" such frivolous or fictitious defences often caused bona fide holders of dishonoured bills of exchange and promissory notes in recovering the amount thereof.

Order XIV. brought into force a new method of working out the principle. Under the Act of 1855, a defendant whose case fell within the Act, and who was served with a writ in proper form, had to obtain leave to appear and defend. Under the Order the defendant appears as of right, and it lies upon the plaintiff to apply for an order for judgment notwithstanding appearance. The original and amended forms under it contain a provision for the judge making an order empowering the plaintiff to sign judgment "unless the defendant shall satisfy him that he has a good defence on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend the action."

The two modes of proceeding embodying the same principle, though in different degree, the later one may be better understood by noting schedule "A" to the Act of 1855; which provided as follows: "Leave to appear and defend may be obtained on an application at the Judge's Chambers, supported by affidavit shewing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear."

"Leave to appear and defend to be given on defendant paying into court the amount endorsed on the writ, or upon affidavits satisfactory to the judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration."

(*f*) Wilson's Judicature Acts (4th ed.) 214.