

MOTIONS FOR NEW TRIALS.

somewhat rudely taught them, that in thinking thus, they have been living in a fools' paradise.

Why the practice should not be uniform we are at a loss to understand.

The Judicature Act, it is true, as passed by the Legislature, did prescribe a uniform practice on this point for all the Divisions, but one of the earliest exercises of the power of the Judges to make rules, was signalized by their passing rules to destroy this uniformity.

We do not say that the scheme prescribed by the original rules was perfect, or one that could not have been improved upon; but we cannot help thinking that the learned Judges would have acted more within the spirit of the Act, and would have saved a great deal of unnecessary complexity, if, instead of doing as they have done, they had striven to lay down a simple, expeditious and inexpensive procedure, and made it applicable to all the Divisions. As the practice now stands there is one rule for the Queen's Bench and Common Pleas Divisions, and another for the Chancery Division. In the Queen's Bench and Common Pleas Divisions, if the case has been tried by a jury, in order to set aside the verdict, an application for an order *nisi* is necessary; but in cases tried without a jury, then, in order to set aside the verdict, a notice of motion is necessary, and in order to make assurance doubly sure in some cases, we believe, it is customary, when an order *nisi* is obtained, to give notice of motion as well. It cannot be said by introducing this variety in practice the new rules have made any improvement in the practice which formerly prevailed.

In the Chancery Division, the same double practice is also prescribed by the rules of the Supreme Court, with the further extraordinary procedure that an application for the order *nisi* is to be set down, and notice of the application served. To get

rid of this absurdity, however, the Judges of that Division passed a regulation in September last (see *ante* p. 293), whereby they determined not to grant orders *nisi*.

It appears to us that the present practice, as prescribed by the rules, is defective in two respects; first, in providing a different mode for making the application in jury and non-jury cases; and second, in providing that the practice in the Chancery Division is to be different from that of the other Divisions.

In these two respects we trust it may be soon amended. The retention of the old system of rules *nisi*, we believe to have been a mistake, and one that leads to a great waste of judicial time.

It is said that it saves time, because it enables the court to nip cases in the bud. But the question is whether many of these cases would ever be brought before the court at all, if, in every case, the applicant were exposed to the penalty of having to pay the costs of the motion if he failed. We do not think they would, and it is certain that in every case in which an order *nisi* is granted, the court first hears an argument on the motion for the order, and then a second argument on the motion to make it absolute. Then, again, is it not the fact that on not a few days during the sittings the Judges are not fully occupied, owing to the fact that the orders *nisi* are not ripe for hearing, owing to the delay which has necessarily to take place between the granting of the rule and the time of its return?