This rule entirely supersedes the former right of a plaintiff at common law to claim a nonsuit, and of a plaintiff in equity to dismiss his bill at his own option: Fox v. Star Newspaper Co., [1900] A. C. 19. It is intended to form a complete code of procedure, upon this portion of our practice. Under it the right of a plaintiff to discontinue up to a certain stage is practically absolute. He would not be permitted to do so in fraud of a compromise or other agreement with defendant in regard to the disposition of the action: Betts v. Barton, 3 Jur. N. S. 154. He would not thus be permitted to deprive a defendant of such a right as that of enforcing his claim for damages upon an undertaking in an interlocutory injunction: Newcomen v. Coulson, 7 Ch. D. 764. Nor could he by this method prevent a defendant seeking, by appeal in due course, relief from an onerous interlocutory order pronounced against him: Robertson v. Laird, supra.

But, assuming that, if plaintiff had not discontinued, defendant could successfully, in the then state of the litigation, have moved for judgment of specific performance under Rule 616. . . . —I strongly incline to think he could not succeed upon such a motion if opposed (see McLeod v. Sexsmith, 12 P. R. 606)—I would not on that account deem plaintiff deprived of the right to discontinue, conferred in such explicit terms by Rule 430. Nor is defendant by this discontinuance denied any substantial right or remedy to which he may be entitled. He is given his costs of the discontinued action, and he is at liberty immediately to begin an action for specific performance upon his own account.

The motion must be dismissed with costs, which may be set off pro tanto against the costs to which defendant may be entitled upon the discontinuance.

STREET, J. FEBRUARY 20TH, 1905.

TRIAL.

AMES v. SUTHERLAND.

Pledge—Shares—Advances by Brokers—Margins—Speculative Shares—Fall in Price—Sale without Notice to Customer—Damages—Measure of—Intention of Customer to Retain Shares — Price at Time of Trial — Unreasonable Delay in Objecting to Sale.

Action for moneys advanced by plaintiffs as defendant's brokers to protect shares bought by plaintiffs for defendant on margin.

On 3rd March, 1902, defendant (living in Winnipeg) employed plaintiffs (carrying on business at Toronto as