

opinion that the case was governed by *Toke v. Andrews*, 8 Q.B.D. 428, and that as the plaintiffs relied on their counter-claim merely as a defence or shield to the defendants' counter-claim and not as a substantive cause of action, it might properly be set up by reply, and that it was not a case in which the matter relied on by the plaintiffs as a counter-claim could properly be set up by them by amendment of their statement of claim.

PAYMENT INTO COURT FOR LEAVE TO DEFEND—BANKRUPTCY OF DEFENDANT BEFORE TRIAL—SECURED CREDITOR—RULE 115—(ONT. RULE 603).

In re Ford (1900) 2 Q.B. 211, although a bankruptcy case, nevertheless deserves attention, inasmuch as it deals with the question of the effect of a payment into Court as a condition for leave to defend an action in which a summary motion for judgment is made under Rule 115, (Ont. Rule 603). In this case after the payment into Court had been made by the defendant and before the action had been tried, the defendant became bankrupt, and the trustee in bankruptcy applied to have the money so paid into Court, paid out to him; Wright, J., however held that he was not entitled to the money, which was to be regarded as paid in as a security for the plaintiff's debt in case he should succeed at the trial in establishing his claim, and that the plaintiff was to be regarded, to the extent of the money so paid in, as a secured creditor.

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Practice.] *DEUBER WATCH CASE CO. v. TAGGART.* [Dec. 20, 1899.

Evidence—Leave to adduce, after judgment in appeal—Rule 498.

After the judgment of the Court of Appeal affirming the judgment of the trial judge dismissing the action, had been pronounced, drawn up, and entered, and while an appeal was pending therefrom to the Supreme Court of Canada, the plaintiffs moved for leave to adduce further evidence for the purpose of showing that an exhibit which was used as part of the evidence in the case was not a true copy of the original document. It was not suggested that there was any error in the judgment of the Court of Appeal which could be corrected by the introduction of the proposed evidence, or that, if the proposed evidence had been given while the appeal was pending, the judgment would have been different. It might tend to displace one of the grounds on which the trial judge relied, or might pre-