

ing the form of the contract, but whether sureties or insurers was immaterial, because, though the mortgage and policy were separate instruments they were nevertheless parts of the same transaction, the procuring of the policy being expressly provided for in the mortgage, that therefore notwithstanding the form of the documents they were in effect co-sureties with Denton in unequal amounts, and were bound to contribute in the like proportions to the payment of the deficiency, and as the plaintiffs were liable for the whole debt, which had been ascertained to be £5,000, and Denton for only £1,000, the proportions of their respective liabilities were 5/6 and 1/6.

SHIP—CHARTER PARTY—DISCHARGE OF CARGO—DEMURRAGE.

In *Hutcheon v. Stewart* (1903) A.C. 389, the House of Lords (Lord Halsbury, L.C., and Lords Macnaghten, Davey, Robertson and Lindley) have decided that where a clause in a charter party provides that the cargo is to be discharged with customary steamship despatch as fast as the steamer can deliver during the ordinary working hours of the port of discharge, but according to the custom of the port, subject to a special exception in case of a strike, or lockout, or epidemics, demurrage is not payable if the discharge is effected with the utmost despatch possible, consistent with the custom of the port, and having regard to the facilities of delivery and all other circumstances not brought about by or within the control of the person whose duty it is to take delivery.

**TESTAMENTARY POWER—POWER OF APPOINTMENT—COVENANT TO EXERCISE
TESTAMENTARY POWER FOR BENEFIT OF CREDITOR—PRIORITIES—APPOINTED
FUND—(R.S.O. c. 337, s. 20).**

In *Beyfus v. Lawley* (1903) A.C. 411, the House of Lords (Lord Halsbury, L.C., and Lords Macnaghten and Lindley) have affirmed the decision of the Court of Appeal *In re Lawley, Zaiser v. Lawley* (1902) 2 Ch. 799 (noted ante, vol. 39, p. 102) where it was held that a borrower having a general testamentary power of appointment over a fund could not, by exercising it in favour of the lender as security for a loan, give the lender any priority over other creditors in regard to the fund, because by the exercise of the power the fund, ipso facto, becomes general assets of the estate of the appointor, (see R.S.O. c. 337, s. 20).