for distribution among the insured's creditors.   Judgment of STREET, J., affirmed.

Aylesworth, Q.C., for appellant.   *W. E. Middleton* and *J. F. Macdonald,* for respondents.

From Boyd, C.]   KIDD *v.* THOMSON.   [May 5.

Ship—General average—Ice.

, A liability to general average contribution arises only where both ship and cargo are in imminent and uncontemplated peril, and there is expenditure or sacrifice to secure their safety.   There is, therefore, no liability on the part of the cargo of a ship to general average contribution when, at a season of the year when such an occurrence is to be expected, ice forms in a harbour where a ship is lying in safety, and tugs are employed for the purpose of releasing her to enable her to complete her voyage.   Judgment of BOYD, C., reversed.

W. R. Riddell and *Glyn Osler,* for appellants.   *J. W. Hanna,* for respondents.

Practice.]   CITY OF TORONTO *v.* CANADIAN PACIFIC R. W. CO.   [May 9.

Stay of proceedings—Action for rent—Pending reference as to title and other matters—Vendors and Purchasers Act—Scope of reference—Leave to appeal.

The Court refused the plaintiffs leave to appeal from the decision of a Divisional Court, 18 P.R. 374, affirming an order staying proceedings in this action, deeming that the action was unnecessary.

Robinson, Q.C., and *Fullerton,* Q.C., for plaintiffs.   *Armour,* Q.C., and *Angus MacMurchy,* for the defendants.

Practice.]   IN RE SHAW AND CITY OF ST. THOMAS.   [May 10.

Municipal corporations—By-law—Motion to quash—Time—Service of notice of motion.

A summary application to quash a municipal by-law registered under s. 396 of the Municipal Act, R.S.O c. 223, is "made" within the meaning of s. 399, when notice of the motion is served, the affidavits in support of it having been already filed ; it is not necessary that the motion should be brought on for hearing within the time prescribed by the section.   *Re Sweetman and Township of Gosfield,* 13 P.R. 293, approved.   Decision of Rose, J., affirmed.

W. R. Riddell, for appellants.   *W. L. McLaws* and *T. A. Hunt,* for respondent.