

*Held*, that defendant by reason of his misconduct was responsible for the delay and was liable in damages and that in estimating the amount of such damages the English market must be taken to have been the one that both parties had in view.

*Ritchie*, K.C., and *Pineo*, for plaintiff. *Roscoe*, K.C., for defendant.

Meagher, J.]

[Nov. 20.]

ANDERSON v. MAUDE.

*Arrest—O. 44, r. 3—Discharge from arrest—Construction of words “or for such other relief, etc.”—Trial.*

O. 44, r. 3 provides that a defendant who has been arrested under an order in the nature of a *capias* may at any time apply to rescind or vary it or to be discharged from custody “or for such other relief as may be just.”

*Held*, that the latter words of the rule are not to be regarded as meaning only the same thing as the words which precede them but may fairly be taken to mean some relief not directly covered by the preceding words of the rule.

Defendant who was engaged in an occupation which took him frequently from place to place was arrested at a late hour of the night, when he was without legal advice, and being apprehensive that he might have to go to jail paid the amount of the claim but with an intimation that he intended to dispute it.

*Held*, 1. That his position was practically the same as if he were in custody and that he was entitled to a trial at the earliest possible moment.

2. That plaintiff must be required to go to trial within ten days, after pleadings were closed, failing which an order would pass directing re-payment of the money deposited with the sheriff.

*J. M. Davidson*, for plaintiff. *Bell*, K.C., for defendant.