

## PRACTICE—MOTION FOR JUDGMENT UNDER ORD. XIV (ONT. RULE 739), AFTER DEFENCE.

*McLardy v. Slateum*, 24 Q.B.D., 504, was an application for judgment under Ord. xiv. (Ont. Rule 739), after a defence had been delivered in ordinary course. Field, J., had set aside a Master's order giving the defendant leave to defend on paying the amount claimed into court, on the ground that the application could only be made before a defence was delivered; but on appeal, Pollock, B., and Wills, J., reversed the order of Field, J., holding that it is not too late to make the application after defence, but that where the application is so delayed, the onus is on the plaintiff to show that the delay is justifiable under the special circumstances of the case.

## SHIP—MORTGAGEE—DISCHARGE OF MARITIME LIEN BY MORTGAGEE—RIGHT OF MORTGAGEE TO INDEMNITY FROM MORTGAGOR AND OTHER OWNERS.

The only case in the Probate Division to which it is necessary to refer to here is the case of *The Orchis*, 15 P.D., 38, which was an action by mortgagees of forty-eight sixty-fourth shares of a ship, to recover from their mortgagor and the other co-owners of the ship an amount paid by them to the master, who had brought an action *in rem* against the vessel, and caused her to be arrested. The plaintiffs paid the master's claim in order to get possession under the mortgage. The mortgagors submitted to judgment, but the other owners resisted the plaintiff's claim on the ground that the mortgagees were not entitled to possession of the whole, but only of the shares mortgaged, and were, therefore, under no obligation to pay the master's claim. The Court of Appeal (Lord Coleridge, C.J., Lord Esher, M.R., and Fry, L.J.), however, affirmed the decision of Butt, J., that the claim being one which was a valid charge on the vessel, the mortgagors were justified in paying it in order to get the vessel released, and were, therefore, entitled to recover the amount paid from the owners, within the principle of law laid down in *Edmunds v. Wallingford*, 14 Q.B.D., 811.

## DAMAGES—DETENTION OF GOODS—MEASURE OF DAMAGES—RIGHT TO DAMAGES AFTER GOODS TAKEN POSSESSION OF BY RECEIVER—LORD CAIRNS' ACT—(21 &amp; 22 VICT., C. 27, S. 2)—(R.S.O., C. 44, S. 53 (10).)

*Dreyfus v. Peruvian Guano Co.*, 43 Chy.D., 316, is an appeal from the decision of Kay, J., on the question of damages, 42 Chy.D., 66, which we noted *ante* vol. 24, p. 554. The majority of the Court of Appeal (*viz.*, Cotton and Fry, L.J.J.) affirmed the decision of Kay, J., but Bowen, L.J., dissented. It may be remembered that the action was brought by the plaintiffs for the delivery of certain cargoes then at sea. The defendants claimed by their pleadings the right to receive the cargoes. Shortly after the writ had issued a consent order was made, by which the defendants received the cargoes on the terms of keeping accounts and undertaking to abide the order of the court as to the proceeds. At this time two of the cargoes had arrived, and others were subsequently received under the order. At the trial the judge held that there had been an unlawful detention of the cargoes, and directed an inquiry as to damages sustained by the plaintiffs by reason of such detention. The defendants appealed from the whole