

RECENT ENGLISH DECISIONS:

effect of this declaration was not altered by reason of the notice issued on the following day, and that P. was not *de facto* councillor, and entitled to hold the office until dispossessed by an election petition or by *quo warranto*. This case, no doubt, would be a guide in interpreting R. S. O. c. 18, s. 159.

MARINE INSURANCE—ADVANCED FREIGHT, INSURANCE OF—SUBROGATION OF INSURER TO RIGHTS OF INSURED.

In *Dufourcet v. Bishop*, 18 Q. B. D. 373, goods were shipped on defendants' ship under a charter party; the freight was paid in advance, and the plaintiffs bought the goods from the charterers at a price including the freight and insurance. The cargo was lost through the defendants' negligence. The action was brought to recover for the loss. The question was whether the plaintiffs were entitled to recover as part of the damages they had sustained a sum of £600, being the amount of the advanced freight, it being admitted that as to this part of the claim the action was being carried on for the parties who had insured the freight, and by whom the plaintiffs had been indemnified as to this part of their loss. Denman, J. held that the plaintiffs were entitled to recover this amount as part of the damages sustained by them by the loss of the cargo.

INTERPLEADER—PARTICULARS OF CLAIM OF CLAIMANT.

In *Hockey v. Evans*, 18 Q. B. D. 390, the Court of Appeal reversed a judgment of the Master of the rolls. Goods had been seized in execution, and the plaintiff in the present action had claimed them under a chattel mortgage, under which he claimed there was due to him £750 and interest. The sheriff interpleaded, and in the interpleader proceedings the sheriff was ordered to sell the goods, and out of the proceeds to pay the plaintiff the amount claimed. The sheriff accordingly sold, and paid the plaintiff the £750 and interest, but the plaintiff also claimed a further sum of £23 for costs, which not being paid, this action was brought to recover it. At the trial the Master of the Rolls gave judgment for the plaintiff for the amount of the costs; but the Court of Appeal held that the plaintiff was bound by the particulars of his claim, the order for sale being made in reference to that claim; and, as Sir James Hannen justly observed, to throw on the sheriff the duty of determining the validity of any other claim,

would put him in the difficulty from which it was the object of the interpleader procedure to free him.

PRACTICE—JURISDICTION OF MASTER IN CHAMBERS.

In *Oppert v. Beaumont*, 18 Q. B. D. 435, it was held by the Court of Appeal, that under Ord. 58, r. 16, which provides that "an appeal shall not operate as a stay of execution. . . except so far as the court appealed from, or any judge thereof, or the Court of Appeal may order," the Master in Chambers, as having all the jurisdiction of a Judge in Chambers, except certain specified matters of which this was not one; might make an order staying execution pending an appeal.

NEGLIGENCE—EVIDENCE—BURDEN OF PROOF—COLLISION—SHIP AT ANCHOR.

Proceeding now to the cases in the Probate Division, the first which demands attention is *The Indus*, 12 P. D. 46, which was an action to recover damages for a collision. It appeared that the defendants' ship, while in motion, came into collision with the plaintiffs' ship which was at anchor, and it was held that the fact that the plaintiffs' vessel at the time of the collision was at anchor and could be seen, was *prima facie* evidence of negligence on the part of the defendants, and that the burden of proof was on them to rebut the presumption of liability.

COLLISION—DAMAGES FOR LOSS OF LIFE—LORD CAMPBELL'S ACT.

In *The Bernina*, 12 P. D. 5, the Court of Appeal (reversing the decision of Butt, J.,) held that when a collision had occurred through the fault of both vessels, and two persons—an engineer and a passenger—on board of one of them, but who had nothing to do with the navigation, were drowned, they were not to be deemed to be identified with those in charge of the vessel on board of which they were, so as to deter their personal representatives from maintaining an action of negligence against the owners of the other vessel; and (affirming Butt, J.,) that actions under Lord Campbell's Act are not Admiralty actions, and the Admiralty rule as to half damages does not apply to them. This case is remarkable and deserving of careful attention, for the elaborate discussion it contains of the principle of law involved. The cases of *Thorgood*