

JUDGMENT.

No. 76.

HIGH COURT OF ADMIRALTY OF IRELAND.

The 12th day of May, 1869.

The "JOSEPH DEXTER,"

FAIRBANKS, Master. }

The "Joseph Dexter," of Halifax, was arrested on the 25th of January last, at Queenstown, on a Warrant issued in a cause of breach of Contract by non-delivery of the cargo to the holder of the Bill of Lading. The master, Mr. Lewis P. Fairbanks, took defence in that cause. By an order subsequently made by this Court, a commission was issued, by the consent of all parties, for the sale, not only of the vessel but also of the cargo. The sale took place, the ship produced £590 and the cargo about £480, and the proceeds of the sale, amounting to about £980, are now in Court. The pleadings in the original cause are concluded, but no further steps have been taken to bring it to a hearing, and it is still undetermined. On 14th April last, Capt. Fairbanks filed a petition claiming £196 for wages, subsistence, travelling expenses, and disbursements. That claim was opposed by Mr. Otto Burchardt by an answer, in which he alleges himself to be the sole owner of the entire of the ship, and assignee of a mortgage, dated 21st September, 1868, of 32-64th shares thereof, executed by Captain Fairbanks, who then was owner of them, to Messrs. Salter & Twinning, of Halifax, N. S., then owners of the remaining shares; and Mr. Burchardt resists the Master's claim,—first, because under the special agreement for his employment he was bound to give his services as Master gratuitously; secondly, because the sum claimed is excessive; and, thirdly, because Captain Fairbanks having wrongfully, improperly, and in breach of duty, refused to deliver the cargo to the holder of the Bill of Lading, and improperly claimed to retain it on his own behalf, has occasioned great and unnecessary "delay, and expense," that the holders of the Bill of Lading were obliged to institute, and did institute, the suit in which the vessel was arrest-