

Full Court.]

LINDSAY v. CROWE.

[Nov. 22, 1898.]

*Practice and procedure—Counterclaim for slander in action for goods sold—Discretion of judge.*

To an action for goods sold and delivered defendant pleaded among other things a counterclaim claiming damages for words spoken and published by the plaintiff of and concerning the defendant, viz., "I will have you put in Dorchester," meaning that defendant had been guilty of the commission of criminal offences which would justify his imprisonment in the public penitentiary at that place.

*Held*, 1. Dismissing defendant's appeal with costs, that the counterclaim was properly struck out.

2. The costs of the motion to strike out the counterclaim were in the discretion of the judge who heard it, and he having exercised his discretion by allowing the motion with costs, the court would not interfere.

*R. E. Harris*, Q.C., for appellant. *H. A. Lovett*, for respondent.

Full Court.]

FORSYTH v. SUTHERLAND.

[Nov. 19, 1898.]

*Shipping contract—Charter party—Duty of master to sign bill of lading or give up cargo—Lien for demurrage—Cesser clause—Liability of original charterers.*

Defendants' vessel was chartered by R. & Co. to carry a cargo of lumber from Annapolis, N.S., to ports in South America, at a stipulated price per thousand. The charter party contained the two following clauses: (a) "Bills of lading to be signed at any rate of freight without prejudice to this charter party, but not less than the chartered rate. (b) "It is agreed that this charter party is entered into by the charterers for account of another party, their responsibility ceases as soon as cargo is on board, the vessel holding an absolute lien for all freight, dead freight, and demurrage." The bill of lading presented to the master for signature contained this provision, as to delivery of cargo, "to be delivered, etc., unto W. M. F. or to assigns, he or they paying freight for said lumber and all other conditions as per charter party, etc." The master claiming that the lay days provided by the charter party for loading had been exhausted and that the ship was entitled to be paid demurrage, refused to sign the bills of lading when they were presented to him, except upon payment of the demurrage demanded, or to give up the cargo. Plaintiff having paid the amount demanded, under protest.

*Held*, 1. The master was bound either to sign the bills of lading or to give up the cargo, and that his refusal to do so was a breach of the charter party.

2. The bills of lading tendered for signature gave the owners a lien on the cargo for all demurrage legally payable under the cesser clause of the charter party.