PRACTICE—IRREGULARITY—POWER TO IMPOSE TERMS—WAIVER OF RIGHT OF APPEAL.

Aulaby v. *Prætorius*, 20 Q. B. D. 764, is a decision of the Court of Appeal (Fry and Lopes, L.JJ.), on a point of practice. A judgment had been entered prematurely for default of defence, and an application being made by the defendant to set it aside, and asking that the plaintiff should pay the costs; the Master refused the application, and his order was affirmed by Hawkins, J., but the Divisional Court (Huddleston, B., and Manisty, J.), ordered the judgment to be set aside, if £34 (which the defendant admitted that he owed) were paid into court within four days, and in that case, the costs of the application were made costs in the cause, but they ordered that the appeal should be dismissed with costs, if the money was not so paid into court. On appeal, however, from this order, the Court of Appeal held that the judgment being irregular, the defendant *ex debito justitiæ* was entitled to have the judgment set aside, and the court had in such a case no right to impose terms, except as a condition of giving the defendant his costs of the application. It was contended by the plaintiff that the fact that the defendant asked for costs, was sufficient to enable the court to impose terms; but this was held not to be the case. One other point in the case is also deserving of notice, and that is this: Pending the appeal to the Court of Appeal, the defendant paid into court the £34, and it was claimed that his doing so was a compliance with the order appealed from, and therefore, a waiver of the right of appeal from it. But the Court of Appeal said that the payment was made "under the compulsion of the order and not acceding to it," and therefore was no waiver.

SALE OF GOODS—WARRANTY—SALE OF HORSE CONDITION FOR RETURN HORSE DISABLED—IMPLIED CONDITION.

In *Chapman* v. *Withers*, 20 Q. B. D. 824, the plaintiff sued for breach of a warranty on the sale of a horse. The horse had been warranted "quiet to ride," subject to a condition that if the buyer contended the horse did not correspond with the warranty it should be returned on the second day after the sale, for the purpose of trial by an impartial person, whose decision was to be final. The plaintiff removed the horse, and while being ridden it ran away, fell, and broke its shoulder. The plaintiff immediately notified the vendors that the horse did not correspond with the warranty; but that owing to the accident the horse was not in a fit condition to be returned. The horse was ultimately killed. The defendant relied on the non-return of the horse, as a defence to the action, but the Divisional Court (Lord Coleridge, C.J. and Mathew, J.), affirmed the decision of a County Court Judge, that the agreement implied the continued existence of the subject matter of the agreement, and that inasmuch as it was clear on the evidence that the horse was no longer in a condition to be returned for the purpose of trial, the plaintiff was therefore relieved from any obligation to return it.