

INTERPLEADER—GOODS IN EXECUTION—ORDER FOR SALE—APPLICATION OF PROCEEDS IN DISCHARGE OF SECURITY NOT DUE—ORD. LVIII. R. 12 (ONT. RULE 1,112).

Forster v. Clowser, (1897) 2 Q.B. 362, was an interpleader proceeding by a sheriff, in which the goods were claimed by a chattel mortgagee whose security was not due, and which bore a high rate of interest. A Judge (Grantham, J.) in pursuance of the power conferred by Ord. lvii. r. 12 (Ont. Rule 1,112) directed a sale of the goods in question, and the application of the proceeds in discharge of the chattel mortgage, though it was not due, and without making any allowance to the mortgagee in respect of the additional interest which would have accrued had the debt not been paid off before the day appointed for payment. From this order the mortgagee appealed, but the majority of the Court of Appeal (Lord Esher, M.R., and Smith, L.J.) were of the opinion that in exercising jurisdiction under the Rule in question the Judge was not limited by the rules of equity and had a discretion to make the order he did, which under the circumstances they considered to be proper. Rigby, L.J., however, dissented. He is probably right in principle, but then the rate of interest was 60 per cent., and this is possibly an instance of a hard case making bad law.

DISCOVERY—PRODUCTION—CROWN, RIGHT OF, TO DISCOVERY.

Attorney-General v. Newcastle (1897), 2 Q.B. 384, was an information by the Attorney-General on behalf of the crown against a municipal corporation in which the rights of the crown to discovery are discussed. Apart from certain technical points of practice to which it is not necessary here to refer, the Court of Appeal (Lopes and Rigby, L.JJ.) on appeal from Wills, J., decided that the crown is entitled to the same rights of discovery from a subject which any ordinary litigants have against each other, but the subject has not the same right of discovery as against the crown; and furthermore that the crown in virtue of its right to discovery was entitled to the production of documents which might tend to show that the defendants had not the absolute right