the next delivery; and that the respondents had not, by postponing payment under erroneous advice, acted so as to show an intention to repudiate the contract, and thereby release the Company from further performance. This agrees with the decision arrived at by the Queen's Bench Division in the *Midland Railway Co.* v. *Ontario Rolling Mills Co.*, 2 O. R. I.

We may also note that Lord Bramwell expressly repudiated the dictum attributed to him in *Honck* v. *Muller*, 7 Q. B. D. 92, "that in no case where the contract has been part performed, could one party rely on the refusal of the other to go on," as amounting to a renunciation.

DISCLAIMER OF LEASE BY TRUSTEE IN BANKRUPTCY OF ASSIGNEE OF LEASE—LIABILITY OF LESSEE.

The next case which demands attention is that of *Hill* v. *East and West India Dock Co.*, 9 App. Ca. 448—though its importance in this Province since the repeal of the Insolvent Act is diminished.

In this case Hill was lessee of the East and West India Dock Co., and assigned his lease to one Clarke, with the consent of the Company, but on the express stipulation that the assignment should not release or prejudice Hill's liability for the payment of the rent and performance of the covenants; Clarke agreed to indemnify Hill against payment of the rent. Subsequently Clarke filed a petition in bankruptcy, and the trustee in bankruptcy having disclaimed the lease—the Company sued Hill for the rent, and the House of Lords affirming the Court of Appeal, held that he remained liable, and that the disclaimer of the trustee did not operate as a surrender of the lease so as to put an end to the liability of the original lessee upon his covenant, notwithstanding that the Bankruptcy Act, 1869, s. 23, provides that upon a disclaimer by the trustee, the lease "is to be deemed to have been surrendered."

The majority of the House adopted the law as laid down by James, L. J., in *Ex parte Walton*, 17 Ch. D. 756, where dealing with the same question, he said, "where a statute enacts that something shall be deemed to have been done, which, in fact and truth, was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. Now the bankruptcy law is a special law, having for its object the distribution of an insolvent's assets equitably amongst his creditors and persons to whom he is under liability, and upon this *cessio bonorum* to release him under certain conditions from future liability in respect of his debts and obligations. That being the sole object of the statute it appears to be legitimate to say that when the statute says that a lease which was never surrendered, in fact (a true surrender requiring the consent of both parties, the one giving up and the other taking), is to be deemed to have been surrendered, it must be understood as saying so with the following qualification, which is absolutely necessary to prevent the most grevious injustice, and the most revolting absurdity—"shall, as between the leasor on the one hand, and the bankrupt, his trustee and estate, on the other hand, be deemed to have been surrendered." Lord Bramwell, who dissented, considered this method of construction too much like legislation.

CHARTER PARTY—CONDITION AS TO LOADING.

The case of *Grant* v. *Todd*, 9 App. Cas. 470, turned upon the construction of a charter party which provided that the vessel should proceed to a certain dock, "cargo to be supplied as fast as steamer can receive. . . . Time to commence from the vessel being ready to load and unload and ten days on demurrage, over and above the said lay days, at £40 per day, except in case of hands striking work, or frosts or floods, or any other unavoid-