LANDLORD AND TENANT—BREACH OF COVENANT NOT TO UNDERLET WITHOUT CONSENT OF LESSOR—FORFEITURE—RELIEF AGAINST FORFEITURE.

In *Barrow* v. *Isaacs* (1891), 1 Q.B. 417, the plaintiff, as lessor, claimed to recover the demised premises from the lessees, on the ground that the latter had forfeited the lease by breach of covenant not to underlet without the lessor's consent. The lease provided that this consent should not be arbitrarily withheld in the case of a respectable and responsible person. The lessees, in forgetfulness of this term in the lease, had underlet to very respectable and responsible parties, but without having asked the lessor's consent; and the Court was of opinion that if it had been asked, it could not have been reasonably withheld. The defendants claimed to be relieved from the forfeiture, but the Court of Appeal (Lord Esher, M.R., and Lopes and Kay, L.JJ.), affirming Day, J., held that the plaintiff was entitled to recover, and that the Court ought no to relieve from the forfeiture. This case is interesting for the exposition which is to be found in the judgment of Kay, J., of the equitable doctrine of mistake as a ground for relief against forfeiture; mere ignorance on the part of the party claiming to be relieved, of facts which he might have known had he used reasonable diligence, does not constitute any ground for relief. He cites the language of the Lord Chancellor in *Earl Beauchamp* v. *Winn*, 6 H.L. 223: "The cases in which equity interferes to set aside contracts are those in which either there has been *mutual* mistake or ignorance in both parties affecting the essence of the contract, or a fact is known to one party and unknown to the other, and there is some fraud or surprise upon the ignorant party"; and the same principle would appear to apply where relief against a forfeiture is claimed on the ground of mistake, except in those cases where the forfeiture is occasioned by the non-payment of rent a sum of money, or by non-observance of a covenant to insure in a lease; as to which see Ont. Jud. Act, s. 25.

CHARTER-PARTY—CONSTRUCTION.

The Curfew (1891), p. 131, though a decision on the construction of a charter-party, affords instruction on the law of contract which it may be well to note. By the charter-party in question it was agreed between the plaintiffs (ship-owners) and the defendants (charterers) that the plaintiffs' steamer should proceed to the defendants' sailing berth and there load, "always afloat," a full and complete cargo—lighterage, if any, necessary to enable the steamer to complete loading, to be at defendants' risk and expense. The ship proceeded to the defendants' berth and commenced to load, but though "always afloat" in the dock, yet the state of the tide was such that if she took in her full cargo at the defendants' dock, she would have been unable to get over the sill of the dock, and have been delayed thereby a week. The steamer was, therefore, after being partially loaded at defendants' dock, removed to another dock, and the rest of her cargo was there taken in. The plaintiffs sued for freight, and the defendants counter-claimed for the expense of moving a part of the freight from their dock to that at which the loading was completed; and the Court (Hannen, P., and Butt, J.) decided they were entitled to recover, because the fear of the detention