

Com. Pleas.]

NOTES OF CANADIAN CASES.

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attention was drawn towards the end of the train, he did not see the switch stand, and was thrown under the wheels of the car and killed.

Held, that there was such want of care on the part of the deceased as disentitled the plaintiff, his administrator, to recover; and that the case was properly withdrawn from the jury.

Falconbridge, Q.C., for the plaintiff.

Kingsmill, for the defendant.

HARRIS V. WATERLOO MUTUAL INS. CO.

Insurance—Proofs of loss—Fraudulent statement as to amount of loss.

By a policy of insurance against fire the plaintiff effected an insurance on buildings and contents, the amount placed on contents being \$200. In the proofs of loss, to induce the defendants to pay the loss, the plaintiff falsely and fraudulently stated that he had suffered loss on the contents to the amount of \$1,665.50, whereas the contents were proved to be worth only \$150.

Held, that this vitiated the whole policy, and was not confined to the property as to which the false statement was made.

Lash, Q.C., for the plaintiff.

Osler, Q.C., and *Ward Bowlby*, for the defendants.

PARDEE V. GLASS.

Trespass—Seizure—Interference with—Notice of action—Goods in custody of law.

The Bank of Montreal placed an execution against M., plaintiff's son, in the hands of B., a Division Court bailiff, under which B. seized a stallion as belonging to M. The stallion was placed with an innkeeper, pending interpleader proceedings instituted on plaintiff claiming the horse as her property. Subsequently, an execution against the same parties at the suit of P. was placed in the sheriff's hands. P.'s solicitors informed the sheriff of all the circumstances, and the sheriff, on 3rd October, obtained from the innkeeper a written undertaking to keep the horse, stated to be under seizure by the sheriff, until further orders from the sheriff. On 14th October the sheriff was notified of the plaintiff's claim,

whereupon, at his instance, an interpleader order was granted. On 31st December the Division Court interpleader was decided in plaintiff's favour, whereupon the sheriff at once notified the innkeeper that he did not claim any further right to hold the horse. Before the innkeeper had heard from the sheriff plaintiff demanded the horse, but he refused to deliver it up until his charges for keeping it were paid, but did not assert any right to hold for the sheriff. On 17th November part of the charges were paid, either by the Bank of Montreal or P., and the balance was subsequently paid by B. On 3rd November an order was made barring P.'s claim, and directing the sheriff to forthwith deliver up the horse to the plaintiff. On 14th November an action was brought against P., the Bank of Montreal, the sheriff and the bailiff, for conversion, etc., claiming the value of the horse, damages for loss of earnings, etc. About 3rd December, after the commencement of the action, the horse was tendered to the plaintiff, who refused to accept it, except on payment of damages and costs. No notice of action was given.

Held, that there could be no recovery against any of the parties, (1) that the bailiff should have had notice of action; (2) that there was nothing to connect the Bank or P. with the seizure; (3) that though there was what constituted a seizure by the sheriff so as to entitle him to interplead and to make the innkeeper liable if he had not kept the horse for him, the sheriff in no way interfered with plaintiff's possession or control over it, or in any way converted it to his own use, it being at the time in the custody of the law.

Osler, Q.C., for the plaintiff.

Hardy, Q.C., for the Bank of Montreal.

Falconbridge, Q.C., for the sheriff.

Fitzgerald, for P.

Aylesworth, for the bailiff.

ARSCOTT V. LILLEY ET AL.

Magistrate—Action against—Conviction not quashed—Costs—R. S. O. ch. 73, secs. 4, 17—41 Vict. ch. 8 (O.)—O. J. Act, sec. 9, sub-sec. 2, Rule 428.

Held, that the 4th sec. of R. S. O. ch. 73, as amended by 41 Vict. ch. 8 (O.), prevents an