

the address of counsel, is, in the opinion of the Court of Appeal, entirely immaterial. In this case the plaintiff showed a good cause of action by proving a bailment on which a duty arose at common law on the part of the defendant not to be negligent in respect of the plaintiff's horse, and a breach of that duty. That being the case and the plaintiff's right of action being independent of any contract, the Court held that it was one founded on tort. Collins, L.J., states that although the relation of bailor and bailee arises out of some agreement of minds, yet that agreement of minds is not the contract contemplated in the rule as stated by Smith, L.J. The duty arises, in his view, by virtue of the relation of bailor and bailee, and not by reason of any contract whereby that relation is brought about; but wherever the plaintiff claims that the defendant ought to have done something, or taken some precaution, not embraced in his common law liability, that there the plaintiff is obliged to rely on a contract within the meaning of the rule.

**INTERPLEADER**—SALE OF GOODS IN INTERPLEADER PROCEEDINGS—ORD. LVII, R. 12—(ONT. RULE 1112.)

*Stern v. Tegner* (1898) 1 Q.B. 37, may be usefully referred to as indicating the opinion of the Court of Appeal (Lindley and Chitty, L.JJ.) as to the circumstances under which the jurisdiction of the court to order a sale of goods in dispute in interpleader proceedings, may properly be exercised. Lindley, L.J., says at p. 41: "There are three cases which arise in practice. First of all where the security is ample, and where the bill of sale holder tries to assert his rights so as to defeat the execution creditor. That is the common case which s. 13 of the C.L.P. Act, 1860, was intended to rectify. The bill of sale holder cannot stand upon his rights, when it is plain that he is defeating the execution creditor, which of course involves the assumption that after paying off the bill of sale there will be something left. That is a plain case; in such a case a sale will be ordered.—The next case is where the security is plainly deficient. There if there were a sale there would not be a surplus, whence it follows that the only proper course is to