sell for that. I understood the bailiff sold for rent. Some few days after the sale, he told me he had understood there was no rent. I said to bailiff he had been pretty hard on the plaintiff. The bailiff said he was bound to sell him out any way. There was property sold to pay a great deal more than $100. Plaintiff was sold out completely. Bailiff said he had received notice of rent, but since that he heard there was no rent. The sale was conducted in the usual way."

W. H. McLaughlan proved a valuation of the property sold by the bailiff, amounting to $598 50c.

The amount of the different division court executions, including fees, was $169 98c.

The amount of the county court execution of Hatton's was $184 82c.

This payment was held not to be admissible in evidence. The notice of rent was dated 2nd January, 1862, and was delivered by the plaintiff to the bailiff. It was signed by Thomas Pearson, and stated that $275 were due by plaintiff to Thomas Pearson, for one year's rent of premises.

A notice of action to the bailiff was put in, signed by plaintiff.

It was proved that the co-defendants of the bailiff, who are his sureties, did not, at the time of entering into the covenant, nor since, reside in the county of Victoria.

It was contended for the sureties at the trial, that they were not liable, because of their not being residents of the county, according to the statute (Con. Stats. U. C. ch. 19, sec. 35); and that they were entitled to notice of action under sec. 183.

The same objections were taken for the bailiff.

The Chief Justice overruled the objection as to the residence, holding the statute to be directory, not mandatory: and as to the notice of action, he overruled the objection on the part of the sureties, and pointed out that the want of notice had not been raised by plea.

It was also further objected for the bailiff, that the notice served on him was insufficient, and it was so held; and that there was no demand of the perusal and a copy of the warrant under sec. 195; and that the action had not been brought within six months under sec. 193.

It was answered for the plaintiff, that no notice of action was necessary, as the suit was for the bailiff *not* doing his duty, and not for anything he *had* done.

Leave was reserved to the bailiff to move to enter a nonsuit on the two points, of want of notice, and of the action not having been brought within six months.

For the defendants the following evidence was given:

John Dillman stated: "The plaintiff said, on the day fixed for the sale, that Pearson had a landlord's warrant, and the plaintiff wished the witness to buy the things in, to the amount of the rent: it was to an amount over $200.

John R. Little stated: "I undersood the plaintiff had delivered the notice from Thomas Pearson, claiming rent, to the bailiff. The bailiff said, without he got a writing to be relieved from the rent, he would go on and sell for it. Plaintiff said there was no rent due, and that Pearson did not claim any rent."

The section of the act relating to the bailiff's duty when a claim to rent is made, is sec. 177.

The Chief Justice asked the jury to say, whether they were satisfied that the bailiff did actually receive a notice of claim for rent from Thomas Pearson; and if so, was such notice given with the knowledge and concurrence of the plaintiff, and did the bailiff receive it, the bailiff representing it as a *bonâ fide* claim; and whether they believed the bailiff was acting in good faith in relation to this claim, and sold for it after the plaintiff had notified him that there was no rent due, and before the sale. If he did act in good faith in making the levy and selling, the defendants were not liable.

The last part of the charge was objected to by the plaintiff's counsel.

The jury found for the plaintiff, as before mentioned.

In Easter term last, *H. Cameron*, on behalf of the defendants, obtained a rule *nisi*, calling on the plaintiff to show cause why the verdict should not be set aside and a nonsuit entered as to defendant Charles S. Ruttan, pursuant to leave reserved, on the grounds, that no sufficient notice of action was given; that there was no demand made of a copy and perusal of the warrant acted on; that the declaration varied from and was more extensive than the notice of action; and that the action was not commenced within six months from the seizure, or from the first sale. The rule was also to set aside the verdict against the other defendants, and for a new trial, for misdirection of the learned judge in ruling that the said defendants were liable on the bond, although they were not nor are residents of the county, and that they were not entitled to notice of action; and that the action was brought in sufficient time; and for a new trial as to all the defendants, on the ground that the verdict was perverse and against the evidence, and the weight of evidence, which showed clearly that the plaintiff had put forward the claim for rent referred to in the pleadings and evidence, and that the defendant Charles S. Ruttan had acted upon it *bonâ fide*, and was justified in so doing; and that the plaintiff was not entitled to recover against the defendants.

During Trinity term last, *M. C. Cameron*, Q. C., and *Robert A. Harrison*, shewed cause.—No notice of action was necessary (*Dale* v. *Cool*, 6 U. C. C. P. 544); nor was there any plea raising it, even if it should have been given; nor was any demand of perusal or copy of warrant required; for the misconduct of the defendant was what was complained of, and not anything illegal on the writs, or in the act of granting them: *Sayers* v. *Findlay*, 12 U. C. Q. B. 155. This was an act of omission of the bailiff, and not anything done to bring him within section 193 of the statute. It was no defence for the sureties that they were not residents of the county, for the statute is not mandatory: *The Corporation of the Township of Whitby* v. *Harrison*, 18 U. C. Q. B. 603; *The Municipality of Whitby* v. *Flint*, 9 U. C. C. P. 449; *Couse* v. *Hannan*, 14 U. C. C. P. 26. The verdict cannot be said to be perverse, unless it is against law, which cannot be said here: *Brown* v. *Malpus*, 7 U. C. C. P. 189.

H. Cameron, contra.—The action, although formally on the statutory covenant, is in reality for a tort; and if it is held that it is not necessary, when a tort is so prosecuted under the