

But a person employed as the agent of an insurance company is not entitled, without special authority from the board, to undertake that a policy shall be granted. His duty is to obtain proposals, and granting policies is not within the scope of his authority: (*Linford v. Provincial Home Insurance Co.*, 11 L. T. R. N. S. 830).

UPPER CANADA REPORTS.

COMMON PLEAS.

(Reported by S. J. VANKOUGHNET, Esq., M.A., Barrister-at-Law, and Reporter to the Court.)

PEARSON V. RUTTAN ET AL.

Action against Division Court bailiff and sureties—Non-avoidance of statutory covenant—Conditions precedent to bringing of action—Pleading—Nonsuit—Con. Stat. U. C. ch. 19.

Sec. 25 of ch. 19, Con. Stat. U. C., is directory, not mandatory. *Held*, therefore, in this case, which was an action against a bailiff and his sureties for an excessive seizure by the former, and a sacrifice of plaintiff's goods, that the fact of the sureties of a division court bailiff being non-residents of the county in which the bailiff's duties lay, did not avoid the covenant into which they had entered on his behalf, the provisions of the section in question being merely intended for the guidance of the judge as to the class and character of sureties to be required and approved of by him.

Held, also, that in an action against a bailiff of a division court for his own torts, the demand of personal and of copy of warrant, under sec. 195 of ch. 19 Con. Stat. U. C., is not requisite, the same being only necessary in cases of "defect of jurisdiction or other irregularity in or appearing by the warrant," in order that the clerk and not the bailiff may be made liable.

Held, also, that in such an action as the present a bailiff is entitled to notice before suit brought, even though the proposed suit be upon the statutory covenant; that such action must be brought within six months; and that this defence may be raised under a plea of the general issue by statute.

Quære,—1st, Are the sureties of a division court bailiff, in a joint action against principal and sureties, entitled, even under a special plea, to raise the defence of want of notice of action to themselves? 2nd, Can they in such an action plead the want of notice to the bailiff in their own protection? 3rd, Can they, in an action against themselves, take advantage of the want of notice to the bailiff, or of any other defence that would have been open to the latter?

But *held*, in this case, that as the principal and sureties had been joined in one action, and the recovery must, therefore, be against all or none, the discharge of the principal involved that of the sureties.

[C. P. M. T., 1864.]

The declaration was upon the covenant made by Charles S. Ruttan, one of the defendants, as bailiff of the 6th Division Court of the United Counties of Peterborough and Victoria, and by the other two defendants as his sureties for the due performance of the duties of his office, according to the statutes.

The plaintiff alleged that Charles S. Ruttan, as such bailiff, had certain writs of execution against the goods and chattels of the now plaintiff, issued out of the said division court, delivered to him to be executed, to the amount of £25, and no more, for debt, costs, fees and charges; that he seized goods of much more value than £25, and sold of the goods much more than was sufficient to pay the amount he was required to make, to wit, the whole of the goods which he had seized, and levied thereout a much greater sum than the said amount, to wit, to the amount of £150; and also then sold the said goods for a much less sum than the same were reasonably

worth, and for which he could and might have sold the same, and converted the monies arising from the sale to his own use; whereby the plaintiff, being a party to a legal proceeding in the division court, has been damaged. A further breach was also stated: for that the said Charles S. Ruttan illegally and oppressively exacted from the now plaintiff, under certain executions which he had as bailiff against the goods of the now plaintiff, more and other fees than there was and is by law provided and limited in that behalf; that is to say, divers large sums of money, amounting to £50 more than over and above the legal and reasonable fees and expenses demandable by the statute for executing the said writs, and over and above the amounts thereby directed to be levied, contrary to the form of the statute in that behalf; whereby, &c.

Henry Ruttan, one of the defendants, pleaded: 1st, That the deed was not his deed. 2nd (to the first and second counts), That Charles S. Ruttan did not misconduct himself as such bailiff, to the damage of the plaintiff, being a party to a legal proceeding in the said division court. 3rd (to the first breach in the first count), That after the seizure of the goods by Charles S. Ruttan, under the executions, one Thomas Pearson, then being the landlord of the plaintiff and for the premises on which the goods were at the time of the seizure, gave notice that \$270 were due to him at the time of the seizure, for rent accruing due in one year, and required Charles S. Ruttan to distrain for the same, who distrained according, and who also levied for the amount of the said executions; and also for and upon another execution, at the suit of one Wood, issued from the said division court against the goods of the now plaintiff, and one Menthorn as defendant; and Charles S. Ruttan did not sell and dispose of more of the goods of the plaintiff than were sufficient and necessary to satisfy the said executions and rent, and the fees thereon. 4th (to the second breach in the first count), That Charles S. Ruttan did not sell the said goods for a much less sum than they were reasonably worth, and for which he could and might have reasonably sold the same. 5th (to the third breach in the first count), That Charles S. Ruttan did not convert and dispose of the moneys arising from the sale to his own use. 6th (to the second count), That Charles S. Ruttan did not exact, receive and take from the plaintiff, for executing the executions, more and other fees than were and are by law provided and limited in that behalf.

John W. Thompson, one of the other defendants, pleaded the same pleas as his co-defendant Henry Ruttan.

Charles S. Ruttan pleaded not guilty by statute.

The plaintiff took issue upon all of these pleas.

The cause was tried before the Chief Justice of this court, at the last spring assizes, held at Lindsay, and a verdict was rendered for the plaintiff, and \$300 damages.

The evidence was as follows:

A certified copy of the warrant was put in.

Elijah Lake said: "I was at the sale of plaintiff's goods. Plaintiff forbade the sale at the time. There was something said about rent; that there was no rent and the bailiff was not to