maintain an action upon the warranty to recover damages for the breach, or in some cases he may rescind, give up, the contract and sue for and recover the money paid for the goods; for whenever money has been paid on a consideration which has wholly failed, it may be recovered back by the party who paid it.

In an action for Breach of Warranty, the party bringing the action, must prove three things:

1st. The contract relating to the sale, that is to say, the consideration or promise and warranty; 2nd. The breach of the warranty; 3rd. The damages sustained by such breach.

(TO BE CONTINUED.)

MANUAL, ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURTS.

(*For the Law Journal.*—By V.)

CONTINUED FROM PAGE 43.

Goods, specially exempted from seizure, are thus mentioned in the 89th section of the D. C. Act:—"Excepting the wearing apparel, and bedding, of "such person and his family, and the tools and "implements of his trade, to the value of Five "pounds, which shall, to that extent, be protected "from such seizure."

It will be seen that the protection only extends to cover goods to the value of five pounds altogether, and it would probably be considered that the term "value" refers to the judgment creditor, and therefore that articles should be valued with reference to the price, they would probably bring at bailiff's sale.

By the 6th section of the D. C. Ex. Act, the landlord of any tenement is authorised by any writing under his hand or under the hand of his agent to be delivered to the Bailiff making the levy, (the writing stating the terms of holding, and the rent payable for the same) to claim any rent then due to him not exceeding a certain period, according to terms of payment, and in case of the claim being so made, the Bailiff making the levy must distrain as well for the amount of the rent so claimed and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued, &c.; thus placing the officer in the position of Bailiff for the landlord, and at the same time an officer of the Court for the purpose of levying the amount of the Execution. Now as the landlord could himself distrain wearing apparel and the other excepted articles, so can the Bailiff of a Division Court, when thus acting for him. This then forms an exception to the rule, exempting wearing apparel from seizure, and although the wearing apparel and implements of trade of a debtor are under the 89th sec. of the D. C. Act exempted from seizure, yet when the landlord gives the bailiff a notice under the 6th sec. of the D.C.E. Act, claiming arrears of rent, the bailiff may distrain such wearing apparel, &c., in order to satisfy the rent so claimed.[1] We shall have occasion hereafter to notice more particularly the proceedings when a claim for arrears of rent is made by the landlord.

Disposal and Sale of Goods taken in Execution.—After goods have been seized under a warrant of execution, an inventory of them should be made. The Bailiff may either leave the property seized on the defendant's premises, placing a person in charge, or may remove it to a place of safe custody till he can sell them. But the Bailiff is not obliged to keep the goods, where he found them, for he is responsible for their safe keeping, and if rescued, he is liable to the plaintiff. It is not unusual, however, for Bailiffs to leave the goods seized in the possession of the defendant, on receiving sufficient security that they will be forthcoming on the day of sale. This practise is not prohibited by the Statute, and it seems the most inexpensive mode for the defendant; for by this means he is not deprived of the use of his property, nor is he at the expense of a person in charge. It is to be remembered that in thus acting, the Bailiff assumes a personal responsibility, for he cannot compel a plaintiff to step into his shoes and sue on the security, in case the goods are not forthcoming on the day of sale, and consequently he would be liable to the plaintiff to pay at least the value of the goods seized. In practise this mode of proceeding seems to work well.

[1] *Woodcock v. Pritchard*, 1 C. C. C., 493.

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

WOODS v. THE MUNICIPALITY OF WENTWORTH AND THE CORPORATION OF HAMILTON.

(Easter Term. 19 Vic.)

Highways—Corporation—Liability of, to repair.

In case against the Municipality of the County of Wentworth and the Corporation of the City of Hamilton for not repairing a bridge alleged to be lying between the County of Wentworth and the City of Hamilton; it appearing in evidence that the bridge crossed the Desjardins canal the waters of which, by statute, are navigable waters, and are not within either the city or the county; that on each side of the canal there was a marsh, that the dry land on the one side was part of the township of West Flamboro', and on the other part of the of the City of Hamilton and that the canal divided the two.

Held, that such bridge was not to be considered as a bridge lying *between* the city and county within the meaning of the 32nd section of 12 Vic. cap. 81.

Semble, per *Draper*, C.J., that when the tort alleged is the non-performance of a joint duty; if the joint duty be not proved, the plaintiff must fail in toto.

(6 C. P. R. 101.)

CASE—The declaration stated that a certain bridge called the Upper Burlington Bridge lay between the county of Wentworth and the city of Hamilton, and was a public highway. That after the passing of the Upper Canada Municipal Corporations Act of 1849, it became and was the duty of the defendants to keep the said bridge in repair, and averred as a breach