always do so, as it is his best, if not his only, security. Even on interpleader he would probably be ordered to pay costs for omitting to do so.

In the case put, it would have been better had the Clerk taken security from C. as was proposed, though he certainly was not bound to do so,—or have sold the horse and paid the amount into Court, on receiving from plaintiff the usual Bond.

No. 3. The Constable would be liable to the claimant for damages, for he did that which the attachment did not authorise him to do, viz., he seized the goods of a third party: if the plaintiff actually interfered and ordered the constable to seize the particular horse, he also would be liable to claimant.

No. 4. It is an objection that a party is allowed to sue out an attachment at all without bond to indemnify parties injured, should it turn out that plaintiff has acted without sufficient grounds, (*see query No.* 1); but in case of a doubt, as to whom property belongs, the constable must incur the responsibility of acting on his own judgment; yet there is no objection whatsoever to the constables receiving a bond from the plaintiff to pay costs and damages in case the goods, directed to be taken, prove afterwards to be the property of a third party; and this in addition to the bond which the plaintiff is required to give in the name of the defendant.

In doubtful cases a bailiff who can obtain a bond of indemnity from the party who puts him in motion should always do so: there is nothing against it in the Act.

Welland, March 19, 1857.

I wish to know what course I am to pursue in a case where I placed a note in the hands of a Clerk of a Division Court for collection—obtained judgment thereon—the Execution issued, the Bailiff returned it "no goods"—the Bailiff *died*. I ordered the amount to be collected—the execution issued again. The present Bailiff finds a receipt in the hands of defendant, signed by the deceased Bailiff, in full for the judgment and costs—said receipt mentioning number of suit, and all particulars. How am I to proceed to collect the amount of judgment—and from whom? I also wish to know if I am liable for any costs to the new Bailiff, for services performed in attempting to collect—and if I am, is not the Clerk, or the parties that are responsible for the judgment, responsible for the latter cost also? The defendant refuses to let the receipt pass out of his hands. C.

Answer to the above:—

The Bailiff's personal representatives are liable, as also his sureties. The action should be brought on the Bailiff's covenant for the false return of "no goods," when in fact the Bailiff had levied the money: the defendant who holds the receipt may be subpœnaed as a witness to produce it, and to prove that he paid on the first execution.

The Clerk does not appear to be in any way liable to you.

The Bailiff who made the last levy is of course entitled to be paid his costs, and the amount thereof will properly form part of your claim in the action on the covenant.

Your first step will be to procure a certified copy of the covenant from the office of the Clerk of the Peace of your county.

SUITORS.

Goods Bargained and Sold.

Purchaser not accepting.—If a party refuses to accept goods which he has purchased, the seller may bring an action against him for any loss or damages he has sustained by reason of the party not performing his contract: as the plaintiff has the goods, he will not recover their value, but he may recover for storeage or the like, but in general the difference between the contract price and the market price on the day the contract was broken is the measure of damages.

In an action for not accepting goods sold, the plaintiff must prove the contract and breach, the performance of all that was required by him to be done, the refusal to receive and the amount of damages.

Seller not delivering.—If a party who sells goods to another refuses to deliver them on request, an action lies by the purchaser, and in such action the purchaser must prove the contract, the breach, the performance of all conditions precedent on his part, and the amount of damages. The damages would be the difference between the contract price and the price of the goods at or about the day when they ought to have been delivered.

When parties agree to trade goods, and the balance being in favour of the plaintiff, the defendant omits even for three years to send goods to meet it, the lapse of time does not entitle the plaintiffs to bring an action as for goods sold: his remedy is by an action against the defendant for not delivering goods. To prove that the plaintiff was ready and willing to accept the goods and pay for the same, it will not be necessary to prove a tender of the money, and a demand of the goods is sufficient evidence that the plaintiff was ready and willing; the demand may be by the plaintiff's servant.

Breach of Warranty.

We now come to a subject of very general importance, on which little information is possessed by Division Court suitors, and upon which much misapprehension prevails. We purpose therefore entering at some length on this branch of the law and the evidence in relation to warranties in general.

Warranty in general.—Where goods or other things have been sold with a warranty as to their quality, which has not been kept, the purchaser may