Frontenac, Lennox and Addington, for taking goods off certain premises of the plaintiffs demised by them to one Thomas Mulhall, and which goods were seized by the defendant, under a writ of *fieri facias* issued out of this Court at the suit of the Sheriff of the Counties against the goods of one Isaac T. Hance, without first paying half a year's rent, which was in arrear by Mulhall to the plaintiffs at the time of the seizure

There were two counts in the declaration The first count contained the usual allegations of a demise by the plaintiffs of the premises in question to one Thomas Mulhall; of six months rent being due and in arrear from Mulhall to the plaintiffs, of the seizure of goods on the demised premises under a *fieri facias* at the suit of the Sheriff against Hance by the defendant as Coroner of the United Counties, and of the removal and sale of the goods, with the following averment as to notice

And the plaintiffs, in fact, say that after the said seizure and taking of the said goods, and the said removal thereof by the defendant, and before the sale of the said goods by the defendant under pretence of and to satisfy said execution, and while the tenancy of the said Thomas Mulhall so still subsisted, the plaintiffs gave notice to the defendant as such Coroner charged with the execution of the said writ of the aforesaid rent being due and in arrear to the plaintiffs from Mulhall in respect of six months rent of said premises, and then requested the defendant that the plaintiffs might be paid their rent so due and in arrear, but which the defendant wrongfully refused to do

The second count alleged that the plaintiffs issued a warrant of distress to a Bailiff, who distrained the goods to satisfy the rent aforesaid; and that the defendant, as Coroner as aforesaid, removed the goods under the pretence of the said writ of *fieri facias*, without paying the rent aforesaid to the plaintiffs, with an averment as to notice to the defendant as in the first count, with an addition that the plaintiffs forebade the defendant to sell the goods until the said arrears of rent had been paid to the plaintiffs

The defendant, among other pleas, pleaded to the first count—"That the plaintiffs did not, after the taking of the said goods and chattels in the said messuage and tenement by the defendant, as in the first count mentioned, or at any time before the removal of the same, giving notice to the defendant; nor had the defendant at any time before the removal of the said goods any notice or knowledge whatsoever of the said rent or any part thereof, or any rent whatsoever being due and in arrear from the said Thomas Mulhall to the plaintiffs."

To this plea the plaintiffs demurred.—The principal ground of demurrer assigned by them being, that no such notice as in the plea mentioned is necessary before the removal of goods.

To the second count, the defendant pleaded, among other things, "That, after the removal of the goods by the defendant, there remained goods on the said premises sufficient to satisfy the rent in the declaration alleged to be due"

To this plea the plaintiff demurred also, assigning as grounds of demurrer, that it was not pleaded to any particular count, and that it disclosed no ground of defence whatever At the argument the learned counsel for the defendant very properly abandoned this plea as untenable.

The defendant gave due notice that he intended, at the argument, to take exception to the first count of the declaration, "That it is not sufficient to aver in the declaration that the Coroner had notice that rent was in arrear after the removal of the goods from the premises; on the other hand, that it should contain an averment that the Coroner had notice of the rent being in arrear before the removal and sale"

And to the second count, "That it should contain an averment that the Coroner had notice that there was rent in arrear before the removal of the goods from the premises."

Agnew for demurrer.

A. S. Kirpatrick, contra.

MACKENZIE, JUDGE —By the Statute 8 Anne, cap. 14, section 1. it is enacted: "That no goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements which are or shall be leased for life or lives terms of years, at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall, before the removal of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord of the said premises or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution, provided the said arrears of rent do not amount to more than one year's rent"

It will be seen that nothing is said in the statute about notice being given by the landlord to the Sheriff or party charged with the execution of the writ. I find in the form of a declaration under the Statute of Anne, given in 2 Chitty on Pleading, 630, an averment of a notice being given by the landlord to the Sheriff after the taking of the goods on the messuage, and during the continuance of the tenancy and before the removal of the goods from the premises under pretence of the execution. And in a note annexed to it, it is stated the omission of the averment would be fatal, unless after verdict In Archibold's Treatise on the Law of Landlord and Tenant, published in 1855, at page 250, I find a form of a declaration under the Statute in question given, containing the following averment in reference to notice: "And the plaintiff saith that after the said seizing and taking of the said goods so being in the said messuage as aforesaid, and before the removal of the same under the pretence of the said writ, the plaintiff gave notice to the defendant so being then Sheriff of the said County as aforesaid, of the aforesaid rent being due and in arrear to the plaintiff from the tenant, and then requested the defendant that the plaintiff might be paid his rent so due, in arrear and unpaid before the said goods and chattels or any part thereof should be removed from or out of the said messuage and premises" There is also, at page 249, a form of notice given. And the author, at page 250, makes the following observation: "Although the Sheriff will not be liable to the landlord unless he have notice of the landlord's claim; yet, if the Sheriff or his officer have knowledge of it in any other way—from the landlord, or from any other person—it will be sufficient." In a precedent given in the case of *Riseley* v *Ryle*, 11 M. & W. 16, there is a similar averment of notice. And, indeed, in every precedent and form of declaration I find in the books under the Statute 8 Anne, cap 14, I find an averment that the landlord gave notice to the Sheriff, before the removal of the goods from the demised premises, of the rent being in arrear and unpaid. In the case of *Palgrave* v. *Windham*, 1 Strange, 212, the Court seemed to hold that such notice from the landlord, to the Sheriff or his officer, was necessary to sustain the action. In the case of *Wurin* v. *Dewbery*, 1 Strange, 67, the same doctrine was countenanced by the Court. The case of *Smith* v *Russell*, 3 Taunt, 100 and the case of *Coyler* v. *Speer*, 4 Moore, 473, are in favor of this view of the case. In the case of *Arnett* v. *Garnett*, 3 B. & Ald. 440, ABBOTT, C. J., said. "It is true that the Sheriff does not become a wrong-doer by the act of removing the goods until he has notice of the landlord's claim, and, perhaps a notice may be necessary to support an action against him as a wrong-doer" HOLYROOD, J., said: "It is true that no action would lie against the Sheriff, for any act done by him, before he had notice of the landlord's claim" And in the case of *Andrews* v *Dixson*, 3 B. & Ald 645, the Court said: "If, indeed, a Sheriff has no reason to suppose any rent to be due, he will be protected in case he pays over the money to the execution creditor The notice to the Sheriff is only for the purpose of establishing, beyond doubt, his knowledge of the landlord's claim If that knowledge can, by any other means be brought home to the Sheriff, he will be liable." In Lush's edition of Saunders on Pleading and evidence, at page 888, I find it laid down, "That the Sheriff must be proved to have had notice of the landlord's claim; but, if it appear that the sale had been conducted with great secrecy and despatch, it is for the jury to say whether he knew of the fact that the rent was in arrear, though no notice had been given to him before the sale" And there seems to be a distinction between a proceeding against the Sheriff by way of motion, and an action for Tort, for removing the goods. In Archibold's Landlord and Tenant, 250, it is laid down, that "Where it is intended to proceed by way of motion, it will be sufficient if such claim came to the knowledge of the Sheriff or his officer at any time whilst the goods remained in his hands, although after the removal of them from the demised premises." But it would appear to be otherwise, when an action at law is brought against the Sheriff, for wrongfully removing the goods