

## DIARY FOR JUNE.

3. Sun. .... 1st Sunday after Trinity.
4. Mon. .... Lord Eldon born, 1751.
5. Tues. .... Maritime Court sits.
9. Sat. .... H. C. J. sit. end. L. S. Easter Term ends.
10. Sun. .... 2nd Sunday after Trinity.
11. Mon. .... York C. C. sit. for motions begin.
12. Tues. .... Gen. Seas. and C. C. sit. for trial except in York.
15. Fri. .... Magna Charta signed, 1215.
16. Sat. .... York C. C. sit. for motions end.
17. Sun. .... 3rd Sunday after Trinity.
18. Mon. .... Battle of Waterloo, 1815.
20. Wed. .... Accession of Queen Victoria, 1837.
22. Fri. .... Longest day. Slavery declared contrary to law of England, 1772.
24. Sun. .... 4th Sunday after Trinity. St. John Baptist.
25. Mon. .... Sir M. C. Cameron died, 1887.
28. Thur. .... Coronation of Queen Victoria, 1838.
29. Fri. .... St. Peter.

## Reports.

## DIVISION COURTS.

[Reported for the CANADA LAW JOURNAL.]

## THIRD DIVISION COURT, COUNTY OF ELGIN.

## BELL TELEPHONE CO. v. PENNINGTON.

*Distress for rent—Exemptions from seizure—Refusal of bailiff to seize through a mistaken view of the law—Insufficient levy—Second seizure where the first insufficient—Replevin—Detention a good seizure.*

Replevin for a telephone which was loaned on hire by the plaintiffs to Cox & Co., brokers, at St. Thomas. Cox absconded, and left the rent of the premises, about \$50, unpaid. The defendant, as landlord of Cox & Co., instructed the bailiff to seize the goods on the premises, including the telephone, for the rent due. The bailiff seized and sold goods to the value of \$31, but refused to seize the telephone, thinking he had no right to do so. The landlord detained it, claiming a lien on it for the unpaid rent.

*Held*, (1) that the telephone was liable to seizure, and that the defendant was not prejudiced by the refusal of the bailiff to seize it.

(2) That where, through no fault of the landlord, a sufficient levy cannot be made: first for unpaid rent, he may distrain again.

(3) That, in the circumstances, the detention of the telephone by the landlord was a good seizure.

[HUGHES, Co. J.—St. Thomas, May 30.]

The plaintiffs loaned, on hire, one of their operating instruments to Cox & Co., the tenants of the defendant, of certain rooms and premises in the city of St. Thomas, in which

Cox & Co. carried on their business. Cox absconded, and the rent due to the defendant was left unpaid, for which he distrained, issuing his warrant to H. Thornton, his bailiff. Upon the distress certain goods were seized. The telephone was then upon the premises, but it was not included in the distress and sold, as it might have been. The defendant's warrant directed the bailiff to distrain the goods which were liable to distress for rent in the demised premises, but made no exemption of the instrument in question in this action. The goods seized under the warrant were not sufficient, when sold, to pay the rent due. The bailiff supposed that it was illegal to seize the instrument, and he told the defendant that he would not seize it, though the defendant urged, and the warrant required, him to do so. The telephone was not included in the inventory or appraisal; but that was owing to the mistaken view of the bailiff that it was not distrainable, and not from any abandonment by the defendant himself. The rent due and unpaid amounted to \$50, and only \$31 or \$32 was realized. The defendant knew that the bailiff had not seized the telephone, but he still claimed the right to distrain, and he held it for the balance of rent remaining unpaid. It was in his possession on the demised premises when the plaintiffs sent for it, and when, in about ten days afterward, it was replevied. The plaintiffs sent to the defendant to demand their instrument, but the latter refused to deliver it up, on the ground, as he said, that he had a lien upon it for the balance due upon the rent distrained for.

The plaintiffs contended (1) that they are entitled to succeed because there is no evidence that the instrument was seized; but, on the contrary, the evidence shows that it was not. (2) That seizure only could justify a detention of goods on the demised premises. (3) That there could be no lien for rent unless the landlord's rights were actively exercised and enforced by seizure. (4) That as against a stranger to the distraint (as the plaintiffs were) the landlord's proceedings must be strictly regular. (5) That the defendant has established nothing beyond an intention to seize, and that the instrument was not liable to seizure at the time the warrant was issued. *Williams v. Grey*, 23 U. C. C. P. 568, was cited in support of the plaintiffs' contention.