The case of *Bagge*, appellant, v. *Mawley*, respondent, was not like the present (see 8 Ex. 641), because there the landlord after making a distress, although he had the right and opportunity to distrain, abandoned it and distrained a second time for the same rent. It was held that, as he had abandoned the first distress, without any sufficient excuse for so doing, the second distress was illegal.

In this case, although sufficient money was not made by the sale of the goods appraised and inserted in the schedule to pay the rent, the goods seized were never abandoned; on the contrary, the defendant held on to this instrument, insisting upon his right to hold it as and for a distress.

The principle upon which, as a general rule, a landlord cannot distrain twice, was not invaded in this case; there was no vexing of his tenant by the exercise upon two occasions of this summary remedy. It cannot be said that the distress was abandoned by the refusal of the bailiff to sell the instrument replevied, because the defendant held to it that he had a right to seize and sell that, with the other goods distrained. If he had concurred in the apprehension of the bailiff that the instrument could not be seized, and given it up to the plaintiffs, or some one else who claimed it, or handed it over to some creditor of Cox & Co. or their assignees, the case would have been different, and he could have had no right to distrain again.

It was held in *Quinn* v. *Wallace*, 6 Wharton 452, that the levy of one distress is a bar to another, unless the first prove insufficient, without the fault of the landlord.

In *Wallace* v. *Savill*, Lutw. 1536, it was held that the folly of the landlord in not performing an entire duty and fully exercising his right of distress, precluded him from distraining for part of his rent at one time and for other part at another time; and so *toties quoties*, for several times, for that would be great oppression; that it was his duty to take a sufficient distress in the first instance, if property sufficient for that purpose was to be found on the premises; so that he should not come a second time to disturb the tenant in his possession.

This case was unlike any of the cases suggested, for although there were sufficient goods to seize that were seized to pay the rent, yet those actually seized, appraised and sold were not sufficient, and the defendant, under the seizure, had a right to have a second appraisement and to sell what remained unsold. There was no oppression, no irregularity, no harshness; there was no disposition to sell the instrument, but the rent was not paid. The value of the goods set forth and described in the inventory, which belonged to Cox & Company, was not sufficient to pay the rent. The bailiff was mistaken in the view he took of the law, and the defendant did what I think and hold he was justified in doing. He was not bound by the legal opinion of his bailiff as to his rights as a landlord, and I think, and hold, that the defendant properly refused to let the instrument replevied go, until the balance of rent should be paid, which, under the authorities cited, amounted to a legal seizure.

I therefore order judgment to be entered for the defendant, with a return of the goods replevied, or payment of the balance of rent due the defendant, with costs of distress and of this suit.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Full Court.] [May 21.

REGINA *v.* AMBROSE AND WINSLOW.

Canada Temperance Act—Conviction—Jurisdiction of police magistrate—Place where offence committed—Question of fact—Statute not proved to be in force—Certiorari—Want of jurisdiction to be shown affirmatively—Joint conviction—Imprisonment of one defendant for default of the other—R. S. C. c. 178, *ss.* 87-88.

The defendants were convicted by the police magistrate of the town of Peterborough of selling intoxicating liquor in that town, con-