HUGHES, Co. J.—The Statute 17 Car. II. c. 7, s. 4, provides that "in all cases where the value of the chattels distrained shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears are due, his executors or administrators, may from time to time distrain again for the residue of the said arrears."

It is laid down that there is nothing more clear than that a person cannot distrain twice for the same rent, for, if he has had an opportunity of levying the amount of the first distress, it is vexatious in him to levy the second, unless there be some legal ground for adopting such a course.

It is also laid down, with as much certainty, that if a man seize for the whole sum that is due to him, and only mistake the value of the goods seized, which may be of uncertain or imaginary value—as pictures, jewels, racehorses, etc.—there is no reason why he should not afterwards complete his execution by making a further seizure. See *Hutchins* v. *Chambers*, 1 Burr. 579; 1 Wm. Saund. 201, n. 1.

In this case there was no hardship or oppression in what was done by the landlord—the tenants were the only ones who could complain of that, if there had been any such, and they had absconded. I do not see that the landlord in any sense split up the entire sum due to him, and distrained for part at one time and for the other part at another time. That would have been oppressive. On the contrary, he evidently acted (and, I think, properly so) under the supposition that all the goods in the demised premises, including the telephone, were liable to seizure as and for the distress for rent, and it was the mistaken view of the law by the bailiff who made the distress, that the telephone of the plaintiffs was not seized and sold with the other chattels. The defendant ordered him to carry out the warrant of distress and seize the telephone, and the bailiff refused, supposing that it was not restrainable, or that it was exempt from such a seizure. As I have already said, there was nothing oppressive in the acts of either the landlord or his bailiff. The first was insisting upon his full rights and nothing more, and, only for the bailiff's mistaken view of the law, the intrument would have been sold with the other chattels, but there it remained. It cannot be very well urged that because of this mistake, or because there was no actual formal seizure made in the first instance, that therefore the detention of the instrument by the defendant afterwards was illegal.

I think the defendant had a right to detain the instrument under the circumstances. I think he *bona fide* detained it for the balance of rent in arrear, as he had a right to do. *Cramer* v. *Mott*, L. R. 5 Q. B. 357, is in point; *Wood* v. *Nunn* is a leading case on this point, 5 Bing. 10. In that case the defendant, a landlord, to whom rent was in arrear, hearing that a machine was about to be removed, entered on the premises, and, laying his hand on it, said, in the presence of the tenant and the plaintiff, who claimed property in the machine, "I will not suffer this or any of the things to go off the premises till my rent is paid." The plaintiff, however, carried the machine off, and the defendant afterwards seized it. It was held that there was a sufficient distress to entitle the defendant to the article in question, and several other cases, marked and cited in *Cramer* v. *Mott*, show that a mere detention is a sufficient distress.

Had the defendant here first made a distress, and then abandoned his seizure and distrained again, his case under the authorities would have been different, and would have precluded his justifiably detaining the instrument which is the subject of this replevin.

The case *Williams* v. *Grey*, cited in argument, was altogether different in its facts and circumstances from the present. In that case the landlord had purchased a piano at the sale of his tenant's goods, on a distress by himself, for rent in arrear. It was held, in an action by a stranger, for the recovery of the piano, which belonged to him, and which the landlord had himself purchased, that the property never could vest and had not vested in the landlord by such a sale; and that he could not resist the claim of the stranger to the goods on the ground or pretence that he still had a lien for the rent. The court held that it seemed "impossible to consider the piano as remaining forever in his hands, as a pledge, or as being in any way in the custody of the law." In that case, too, the impounding was over, the piano had been removed to the landlord's (the defendant's) own house, and the distress was in every way at an end, which was not the case here.