En Banc ] EX PARTE ALLAIN. [Feb. 9.

*Affidavit—Marksman—Jurat—Deviation from Rule of Court.*

*Held*, on motion to make absolute an order nisi for certiorari, that the omission from the jurat of the affidavit of a marksman of the word "he" and the use of the words "seemed fully to understand," instead of "appeared perfectly to understand," was not such a deviation from the rule of Court as would invalidate the jurat. Rule absolute for certiorari.

*M. G. Teed*, in support of rule. *J. D. Phinney*, Q.C., contra.

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En Banc.] EX PARTE MCCLEVE. [Feb. 9.

*C. T. Act—Search warrant—Order for destruction executed by informant.*

*Held*, Tuck, C.J., and McLeod, J., dissenting, that a constable, upon whose information a search warrant and an order for the destruction of liquors under the C. T. Act were issued, could not legally execute the search warrant or the order for destruction of the liquors. Rule absolute for certiorari to remove order for destruction.

*M. J. Teed*, in support of rule. *W. B. Chandler*, Q.C., contra.

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En Banc.] ADAMS *v.* STOUT. [Feb. 9.

*Runaway—Neligence in not getting out of way of—Damage sustained by owner of runaway.*

In an action in the St. John County Court for damages caused by a collision between plaintiff's and defendant's waggons, plaintiff's evidence was that his horse became frightened, that he was unable to hold him in, but kept him as close as possible to the gutter on the left hand side of the road; that he saw defendant, about 1000 feet away, coming towards him on the same side of the road and shouted to him to get out of the way, but that the latter failed to do so, the result being a collision by which plaintiff's waggon and harness were damaged. Defendant's evidence was that he went over to his right hand side of the road to speak to a man sitting on a door step, when he saw plaintiff's horse coming towards him on the run, about 100 yards off; that he sheared off to the left and was about five feet from the gutter when plaintiff's waggon struck his. The judge found a verdict for plaintiff.

*Held*, per Tuck, C.J., and Hannington, Landry and VanWart, JJ., that verdict should have been for defendant.

Per Barker and McLeod, JJ., that although they might have found differently on the evidence, the County Court Judge's finding should not be disturbed.

Appeal allowed with costs, with direction for a new trial, no leave having been reserved to move for verdict for defendant.

*W. Pugsley* and *E. R. Chapman*, Q.C., for appellant. *A. O. Earle*, Q.C., and *W. A. Erving* contra.