

I conclude, therefore, that Dr. McLean has violated the provision of the Act requiring the notice referred to to be given, and as this is the first case of the kind, to my knowledge, in this county, and he appears to have made some effort to give the notice, a nominal penalty of one dollar is inflicted without costs.

As far as there is any power to protect the magistrates from any action for damages in the matter, they are entitled to protection.

I may add that it is to be regretted that some better provision for reserving judgment, and allowing more time for the consideration of appeals, is not provided than at present exists. As I understand the case of *Re Coleman* 23 Q.B. 615, a judgment of this kind must be given during the Sessions; this necessitates a hurried consideration of the case, perhaps during the continuance of other business before the Sessions, or the County Court; or else an adjournment of the Sessions, with all the expense connected with it, must be had for the purpose of obtaining a reasonable time to prepare the decision.

Province of Nova Scotia.

SUPREME COURT.

EN BANC.]

[Nov. 30, 1895.]

KIRK *v.* CHISHOLM.

MCPHEE *v.* CHISHOLM.

Assignment with preference—Accompanying affidavit—Bill of sale Act—What instruments comprised in.

An affidavit of bona fides accompanying a deed of assignment for the benefit of creditors generally, with a preference to a select creditor in a specified amount, did not state that the amount set forth as being the consideration was justly and honestly due by the grantor to the grantee, and the question was whether such an instrument was a bill of sale, and so came within the provisions of c. 92 R.S. N.S. s. 4 (Bills of sale Act).

Held (following *Black v. Sawyer*, 2 Old 1, and *Archibald v. Hubley*, 18 S.C.R. 116; *Durkee v. Flint*, 7 R. & G. 487, not followed), that the instrument not coming within the exceptions mentioned in s. 10 of said Act, was subject to the provisions of s. 4, and was void for lack of an affidavit complying with the statutory requirements.

C. F. McIsaac, for plaintiff.

Gregory, for plaintiff.

EN BANC.]

[Nov. 30, 1895.]

McMILLAN *v.* GIOVANETTI.

Replevin action—Bona—Satisfaction of condition—Authority of solicitor to compromise after judgment.

G. having suffered a conviction and fine under the C. T. Act, and his goods having been seized under warrant of distraint, became plaintiff in a replevin action and obligor on the usual bond, McM. and McI., the now plaintiffs, being obligees and defendants. Judgment was given against G. for a