

is ordered judgment in case of non pros do pass against the plaintiff in this cause, and that the defendants' do have judgment and execution for their costs of suit.

PICTOU, June Term, 1880.

By the Court.

DAVID MATHESON, *Prothy.*

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IN THE SUPREME COURT.

PICTOU, SS.

DAVID S. FRASER, *Plaintiff.*

vs.

DUNCAN A. FRASER and FLORA FRASER, Absent or
Absconding Debtors, *Defendants.*

I, John S. D. Thompson, of the City and County of Halifax, barrister-at-law of counsel with the above named defendants, do make oath and say as follows:—

1. I was instructed by the attorney of the defendants in the above entitled cause, to enquire of the Honorable Mr. Justice Smith, at Annapolis, on Monday, the first day of October, instant, whether he was prepared to pronounce a decision on the application which had been made to him on behalf of the defendants herein, for judgment of *non pros* when he was presiding at the last term of this Honorable Court at Pictou, on which application I was informed he had reserved his decision. I did so enquire on that day, or the following day, and was told by said Mr Justice Smith that his decision was in favor of the application so made for a judgment of *non pros*. 140

2. On the ninth day of October instant, I read in open court at Annapolis, aforesaid, the rule of judgment of *non pros* herein, when Mr. Justice Smith was presiding, and he placed his initials on the margin of the said rule as a direction to the Prothonotary at Pictou aforesaid, to sign the same as a rule of Court, as of the last June term at Pictou, aforesaid. This being the expressed intention, I afterwards brought the said rule to Halifax, and delivered it to the defendant's attorney. 150

3. In making the enquiry of said Mr. Justice Smith for his decision, and besore he pronounced to me his said decision, I stated that my reason for wishing to obtain a decision one way or the other was that the defendants were under notice of trial for the term of the Supreme Court in Pictou aforesaid, which was then approaching.

JOHN S. D. THOMPSON.

Sworn to before me, at Halifax, in the County of Halifax,
this 23rd day of October, A. D. 1880.

WALTER S. DOULL,

Commissioner of Supreme Court, County of Halifax.

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