

was done to the accused by his conviction as for a second offence; and the wide powers given to a Judge on a motion such as this, by secs. 101 and 102, should be exercised.

The motion should, therefore, be dismissed with costs, but the conviction and warrant of commitment should be amended by setting out those particulars respecting the previous conviction which were in fact proved or admitted before the magistrate.

ROSE, J.

JANUARY 13TH, 1921.

POTTER v. JOHNSTON.

Deed—Conveyance of Land—Evidence to Shew Consideration Different from that Mentioned in Deed—Admissibility—Existence of Real Consideration—Deed not Executed by Grantee—Liability of Grantee to Pay to Estate of Grantor Sum of Money Mentioned in Deed—Implied Covenant.

Action by one of the heirs at law of David Mannen, deceased, to compel the defendant David A. J. Mannen to deliver to the defendant Johnston, as administrator of the estate of David Mannen, a farm which formerly belonged to David Mannen, now in the possession of David A. J. Mannen; or, in the alternative, to compel the defendant David A. J. Mannen to pay to the administrator \$4,000 as the purchase-price of the farm.

The action was tried without a jury at Sarnia.

J. P. Dawson, for the plaintiff.

R. I. Towers, for the defendant Mannen.

J. R. Logan, for the defendant Johnston.

ROSE, J., in a written judgment, said that it was clearly proved by the evidence of the defendant Mannen and others that David Mannen conveyed the farm to the defendant Mannen, by a conveyance duly executed and delivered. The defendant had, therefore, to rely on the alternative allegation that the purchase-price was not paid.

The conveyance was expressed to be in consideration of \$4,000 paid by the grantee to the grantor, "receipt whereof is acknowledged;" it contained no covenant for payment, and it was not executed by the grantee. The defendant Mannen swore—and his evidence was amply corroborated and was to be believed—that the real consideration was that he and his wife should support the grantor, his father, during his life, and that the support was