

all motions, rules or orders made, granted or refused therein, together with his own ruling, judgment or decision thereon; and when a trial has been had, and when any matters of fact therein are brought in question, the evidence and all objections and exceptions thereto, which shall form the appeal book."

*T. D. Cumberland*, for the defendants, the respondent, took the objection that the certificate of the county judge was not sufficient to bring the case before the court. The judge had no power to certify the evidence in substance; he must certify the evidence itself.

*C. W. Bradshaw*, for plaintiffs.

The court (*a*) held, (*Dubuc, J.*, dissenting) that the certificate of the county judge was insufficient and the appeal must be struck off the list with costs of a motion to strike off.

*Appeal struck out.*

#### HOWE v. MARTIN.

*Interpleader order.—Rescission, because of sheriff giving up possession.*

An interpleader order, besides providing for an issue, required the execution creditor to give security for costs by a certain day, otherwise he should be barred, and directed the sheriff to sell unless the claimant gave security for the goods. After lapse of the prescribed period the referee made an order enlarging the time. Upon appeal a judge discharged this order, holding that the creditor had become barred, and that there was no jurisdiction to extend the time. The full court, however, restored the referee's order. After the order of the single judge the sheriff withdrew from possession and the goods were dissipated. The creditor then finding it useless to proceed with the issue, moved to rescind the interpleader order.

*Held*, That the order should not be rescinded, but that the creditor's remedy was by action against the sheriff if he had done wrong.

This was an application to an execution creditor to rescind an interpleader order under the circumstances referred to in the head note.

(*a*) Present: Taylor, C.J., Killam, Dubuc, JJ.