

IN THE SUPREME COURT, 1880.

PICTOU, SS.

DAVID S. FRASER, *Plaintiff*.*vs.*DUNCAN A. FRASER and FLORA FRASER, Absent
or Absconding Debtors. *Defendants*.

I, Robert Sedgewick, of Halifax, in the County of Halifax, Esquire, of Counsel with the above named defendants, make oath and say as follows:

1. I was present in Court at the present sittings of this Court, at Pictou, just before and when this cause was called. I was acting on behalf of the defendants herein at that time, and 240 when the cause was called I called the attention of the Court and of the plaintiff's counsel to the fact of the rule for judgment of non pros herein being on file among the papers herein, and before the jury were sworn. I caused Mr. Stewart, who was engaged with me herein, to serve a true copy of such rule on the plaintiff's attorney. I saw him serve it, and I thereupon asked the presiding Judge to allow the said rule to be added to the record herein. The Judge did not grant the application. I thereupon stated and asked it to be noted by the learned Judge that the defendants counsel withdraw from the trial, which they did, and the cause was tried without any one appearing on behalf of the defendants.

2. I say that I was wholly taken by surprise by the plaintiff proceeding as aforesaid, nor were the defendants prepared to defend this cause at the trial, solely, as I am advised and verily 250 believe, because it was understood by me and the counsel with me that the cause was abandoned by virtue of the said rule for judgment of non pros.

ROBT. SEDGEWICK.

Sworn before me at Pictou, in the County of Pictou,
this 26th day of October, A. D., 1880.

DAVID MATHESON,
Comm'r Supreme Court County of Pictou.

IN THE SUPREME COURT.

PICTOU, SS.

DAVID S. FRASER, *Plaintiff*.

260

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

On hearing read the affidavits of John S. D. Thompson, James McG. Stewart, and Robert Sedgewick, and the exhibits therewith annexed, and the pleadings, affidavits and papers on file