

to the Bill of Sale put in evidence by the Plaintiff, without any plea of fraud being on the record.

6th, Because the learned judge received and admitted evidence of a judgment in the suit of Morrison *vs.* Smith, the same not having been properly proved.

7th, Because the learned Judge improperly received in evidence an Execution issued in the suit of Morrison *vs.* Smith, said Execution being issued on a judgment which was not properly or legally proved.

8th, Because the record in the suit Morrison *vs.* Smith, received in evidence, was incomplete and improperly received, and was not the record of the judgment pleaded in this cause. 50

9th, Because the Record received in evidence and the judgment in the Prothonotary's judgment book, put in evidence by the defendant, are inconsistent.

10th, Because the execution in the suit Morrison *vs.* Smith, received in evidence by the learned Judge, was improperly received.

11th, Because there is no evidence that the officer levying under the execution had the writ, or warrant, in his possession at the time of levying.

And on the grounds taken and argued on the trial, and also because the said execution was never returned into the said County Court. 60

Dated at Halifax, this 16th day of September, A. D., 1881.

BY THE COURT,

J. PARSONS.

Clerk.

On motion of Mr. Tremaine }
for Plaintiff. }

No. 2.

July 13, 1881.

GEO. H. SMITH *vs.* JOSEPH BELL.

GEO. H. SMITH, Plaintiff.—Received bill of sale from W. H. Smith of property. W. H. Smith's signature is to bill of sale. I was in possession of articles mentioned in bill of sale. Some of the articles mentioned in bill of sale taken out of my possession by the sheriff Bell, by Hamilton his deputy. Bill of sale tendered. 70

Cross examined as to Bill of Sale.—Body in my handwriting. My sister witness to bill of sale. I was present. Witness and William H. Smith, my father and Mrs. Smith, my mother, were present at the execution. I filed document myself 9th July, 1880. Bill of sale executed September, 1879.

A—Bill of sale received. A., J. W. J.

Smith stands aside to examine Sheriff Bell.

SHERIFF BELL.—Hamilton my deputy. The property I took was on the premises that had been occupied by William H. Smith, baker. Memo. B contains the articles taken by me and the price I got for the articles.

B---B tendered and received. 80

Cross examined.—Execution against Wm. H. Smith. He carried on business on the premises for some years. About the time of getting writ of summons or execution. I heard W. H. Smith had left the country. All my knowledge of levy and execution is from my deputy. I received the proceeds myself.

GEO. H. SMITH, *examination resumed.*—The articles taken by sheriff were included in bill of sale. The deputy sheriff, Clarence Hamilton, on morning of sale in August, 1880, came to the house, and when articles were offered for sale, by Shand, for myself, protested against sale taking place. I instructed auctioneer to proceed with sale. Deputy Sheriff took them out of possession of auctioneer. He interfered with the delivery of the articles, after goods had been sold. Time of redemption mentioned in bill of sale had not expired by a month or two, at time of sale. The grantor, Wm. H. Smith, consented to my making sale. Horse Harry produced at sale \$35. Mare \$37. I was at sale. Deputy protested against sale as each article was put up; Horse Harry worth \$40, as also the mare. 90