Held, per Strong, Gwynne, and Patterson, JJ., affirming the decision of the Court of Appeal (16 Ont. App. R. 255) Ritchie, C.J., and Taschereau, J., *contra*, that such relationship did not exist under the re-demise clause of the mortgage in this case, the amount purporting to be reserved as rent under such clause being so largely in excess of the rental value of the premises as to indicate a want of intention in the parties to create such relationship.

Held, per Strong, J., that no tenancy at will was created by agreement, but such a tenancy could be held to exist by operation of the statute of frauds, the alleged lease being for a period of more than three years and not signed by mortgagee. The Imperial Statute, 8-9 Vic. c. 106, requiring leases for over three years to be made by deed (of which the Ontario Act is a re-enactment) does not repeal the statute of frauds, but merely substitutes a deed for the writing required by the latter statute.

Per Gwynne and Patterson, JJ., that no tenancy at will, by agreement or otherwise, was created by the re-demise clause of the mortgage.

Held, per Strong, J., Gwynne and Patterson, JJ., *contra*, that the demise clause might be construed as containing an agreement for a lease capable of being enforced in equity and, since the Judicature Act, to be treated by common law courts exercising he functions of courts of equity as a lease.

Per Gwynne, J., that the clause could only be regarded as an agreement for the creation of a tenancy in the future if the parties so desired, such agreement to be carried out by the execution of the mortgage by the mortgagees.

Held, per Strong, Gwynne and Patterson, JJ., that the demise clause could only be construed as purporting to create a tenancy for the entire term of five years, and it could not be held a good lease for four and a half years at a rent reserved of $1000 a year and void for the remaining half year.

Appeal dismissed with costs.

Gibbons for appellants.
Moss, Q.C., for respondents.

Nova Scotia]

ARCHIBALD v. HUBLEY.

Bill of Sale—Affidavit of bona fides—Form of jurat—Omission of date and words "before me"—Writ of execution—Signature of prothonotary.

The Nova Scotia Bills of Sale Act, R.S. N.S. 5th Ser., c. 92, s. 4, provides that a bill of sale or chattel mortgage shall be void unless accompanied by an affidavit that the same was made in good faith for a debt due to the grantee, etc. By sec. 10 the express "bill of sale" does not include an assignment for the general benefit of creditors. One E. assigned his property to A. in trust to sell the same and apply the proceeds to the payment of debts due certain named creditors of the assignor. The affidavit accompanying this instrument omitted from the jurat the date and words "before me."

Held, (Nov. 10, 1890) reversing the judgment of the Supreme Court of Nova Scotia, Gwynne, J., dissenting, that this instrument was not an assignment for the general benefit of creditors and was a bill of sale within the above section of the act.

Held, also, that the affidavit required by said section must have all the requirements of affidavits used in judicial proceedings. Therefore the omission of the date and words "before me" from the jurat made the affidavit void and the defect could not be cured by parol evidence in proceedings by an execution creditor of the assignor to have the mortgaged goods taken to satisfy his execution.

Held, per Gwynne, J., that it is only when an affidavit is necessary to give the Court jurisdiction to deal with a matter before it that defects of form will invalidate it. In a case like this the affidavit is only an incident in the proceedings and the defect could be cured by evidence.

Held also, *per* Gwynne, J., that an assignment of property absolute in its form and upon trust to sell the property assigned is not affected by said section four of the act which deals only with bills of sale by way of chattel mortgage.

The goods assigned by E. were seized by the sheriff under an execution and in an action against the sheriff the execution pro-