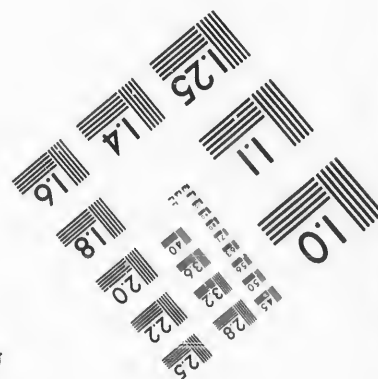
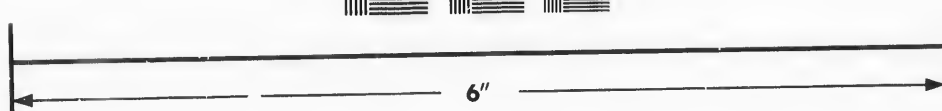
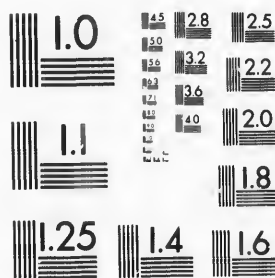


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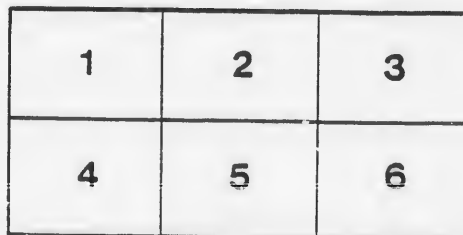
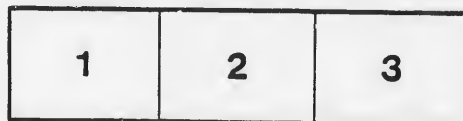
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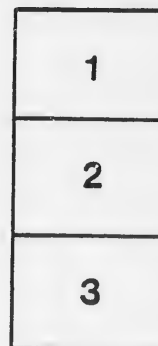
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In the Supreme Court, 1882.

PICTOU, SS.

DAVID S. FRASER, Plaintiff.

vs.

DUNCAN A. FRASER and FLORA FRASER (Absent or
Absconding Debtors), Defendants.

Papers on Argument of Rule Nisi to set aside Verdict.

HUGH McD. HENRY, Q. C.,
Counsel for Plaintiff.

ROBERT SEDGEWICK, Q. C.,
Counsel for Defendants.

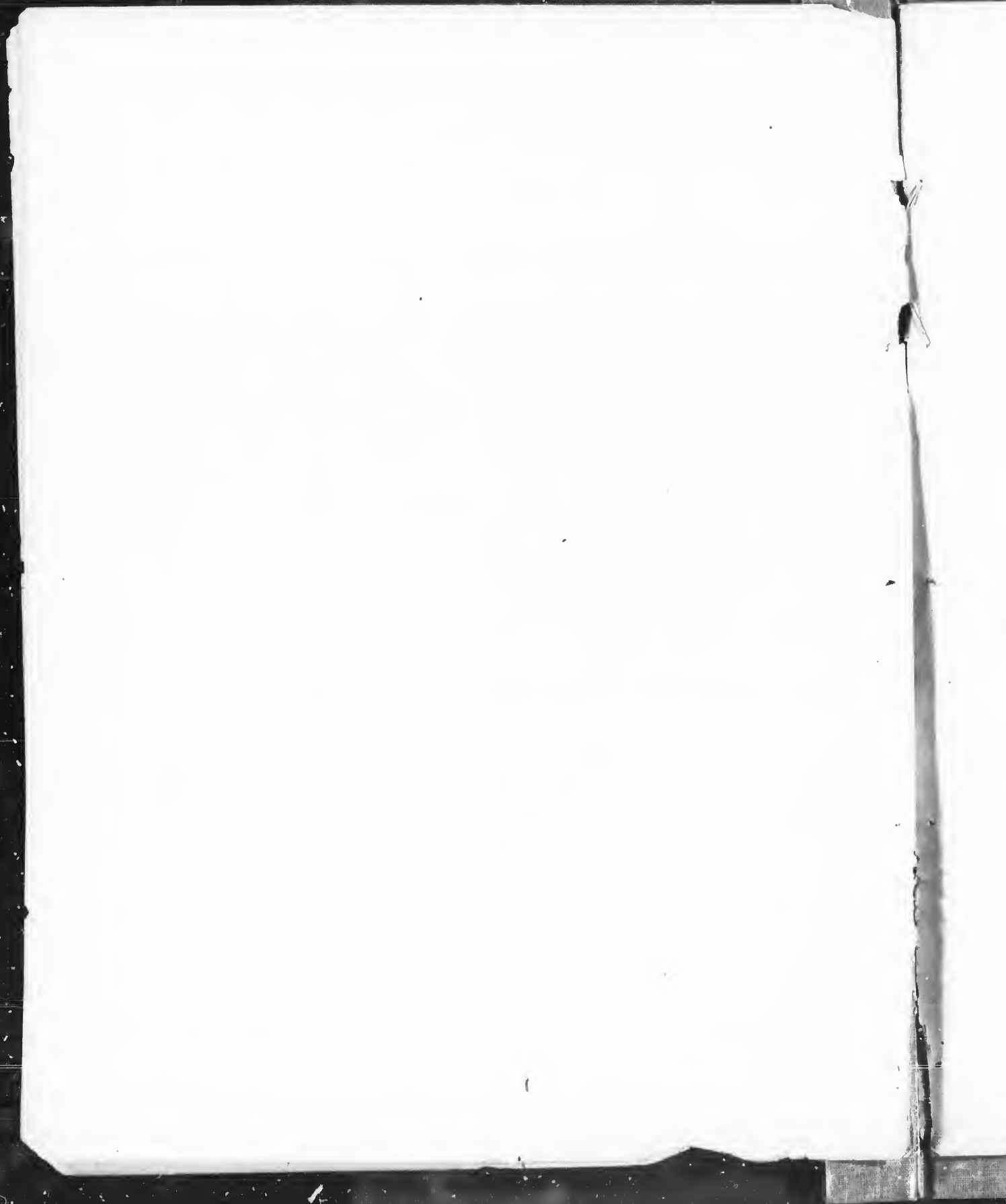
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PICTOU, S.S.

VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland QUEEN, Defender of the Faith, and of the United Church of England and Ireland, on Earth the Supreme Head.*

TO THE SHERIFF OF THE COUNTY OF PICTOU OR TO ANY OTHER OF OUR SHERIFFS:

We command you to summon Duncan A. Fraser and Flora, his wife, late of New Glasgow, in the County of Pictou, absent or absconding debtors, to appear at the Supreme Court at Pictou, within thirty days after the service of this writ at the suit of David S. Fraser of New Glasgow, in said County, merchant, who says that the said defendants are indebted to him for money payable by the defendants to the plaintiff for goods sold and delivered by the plaintiff to the defendants, and for goods bargained and sold by the plaintiff to the defendants, and for work done, and for materials provided by the plaintiff for the defendants at their request and for money lent by the plaintiff to the defendants and for money paid by the plaintiff for the defendants at their request, and for money received by the defendants for the use of the plaintiff, and for interest upon money due from the defendants to the plaintiff at their request, and for money found to be due from the defendants to the plaintiff, as accounts stated between them, and he claims four hundred dollars. 10

Issued this nineteenth day of September, A. D., 1876.

DAVID MATHESON. *Proty.*

D. C. FRASER, *Pltff's Atty.*

20

SUPREME COURT,
PICTOU, SS.

DAVID S. FRASER, *Plaintiff.*

vs.

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

1. The defendants by S. H. Holmes, their Attorney, say that they are not and never were indebted as alleged.

2. And for a second plea, the defendants say that before action they satisfied and discharged the plaintiff's claim, if any, by payment. 30

3. And for a third plea, the defendants say that the alleged cause of action did not accrue within six years before this suit.

S. H. HOLMES,
Defendants' Attorney.

IN THE SUPREME COURT, 1880.

PICTOU, SS.

Case—DAVID S. FRASER, *Plaintiff*.

vs.

DUNCAN A. FRASER and FLORA FRASER, his wife, *Defts.*JOHN S. COPELAND,
FINLEY McDONALD,
JOHN STATHER,
DUGALD McDUGALL,
HENRY TOWNSEND.WILLIAM HOLLESTER,
GEORGE MCKAY,
ENON McDONALD,
JOHN SUTHERLAND,

40

Verdict; we find for the plaintiff against Duncan A. Fraser in the sum of (\$336.45) Three Hundred and Thirty-Six Dollars and Forty-Five Cents.

Recorded in open Court this 21st October, A. D. 1880.

DAVID MATHESON, *Prothy.*JOHN COPELAND,
Foreman.

SUPREME COURT.

PICTOU, SS.

50

. DAVID S. FRASER, *Plaintiff*.

vs.

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

I, James McG. Stewart, of Pictou Town, in the County of Pictou, Barrister, make oath and say, that on the 16th day of June last past, being the last day of the June Term, I personally served D. C. Fraser, Esquire, the plaintiff's attorney herein, with a true copy of the paper writing hereunto annexed marked "A."

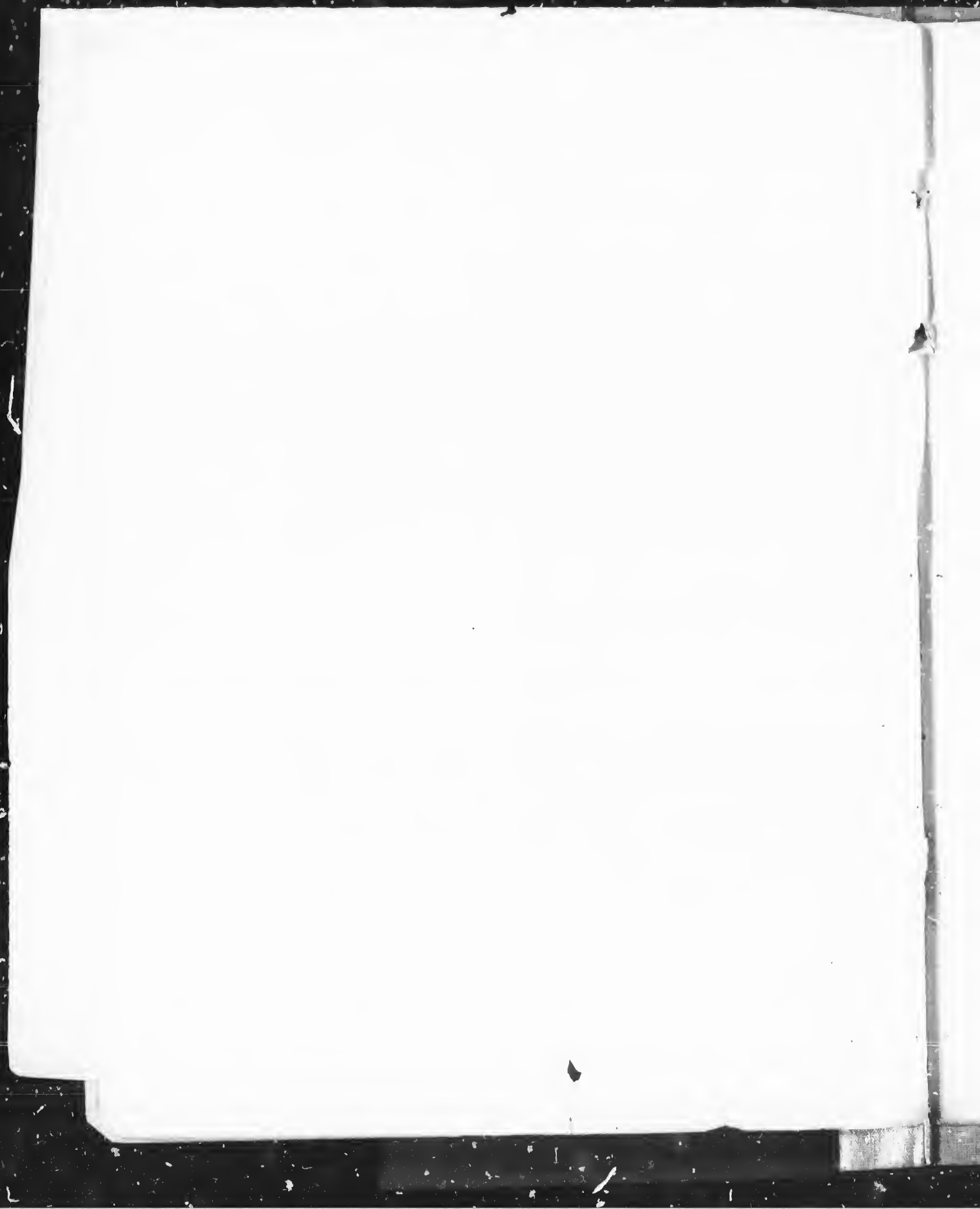
JAMES MCG. STEWART.

60

Sworn to at Pictou, in the County of Pictou, this
day of October, A.D. 1879, before me,

RODERICK MCKENZIE,

Commissioner Supreme Court, County of Pictou.



SUPREME COURT,
PICTOU, SS.

Exhibit A.

DAVID S. FRASER, *Plaintiff*.

vs.

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

70

Take notice that unless you proceed to the trial of this cause at the sittings of this Honorable Court, at Pictou, next ensuing, the said Court will be moved on the last day thereof for judgment as in case of nonsuit, the said cause having been more than two terms at issue.

Pictou, June 16th, 1879.

S. H. HOLMES,
Defendants' Attorney.

To the Plaintiff or his Attorney.

SUPREME COURT,
PICTOU, SS.

DAVID S. FRASER, *Plaintiff*.

80

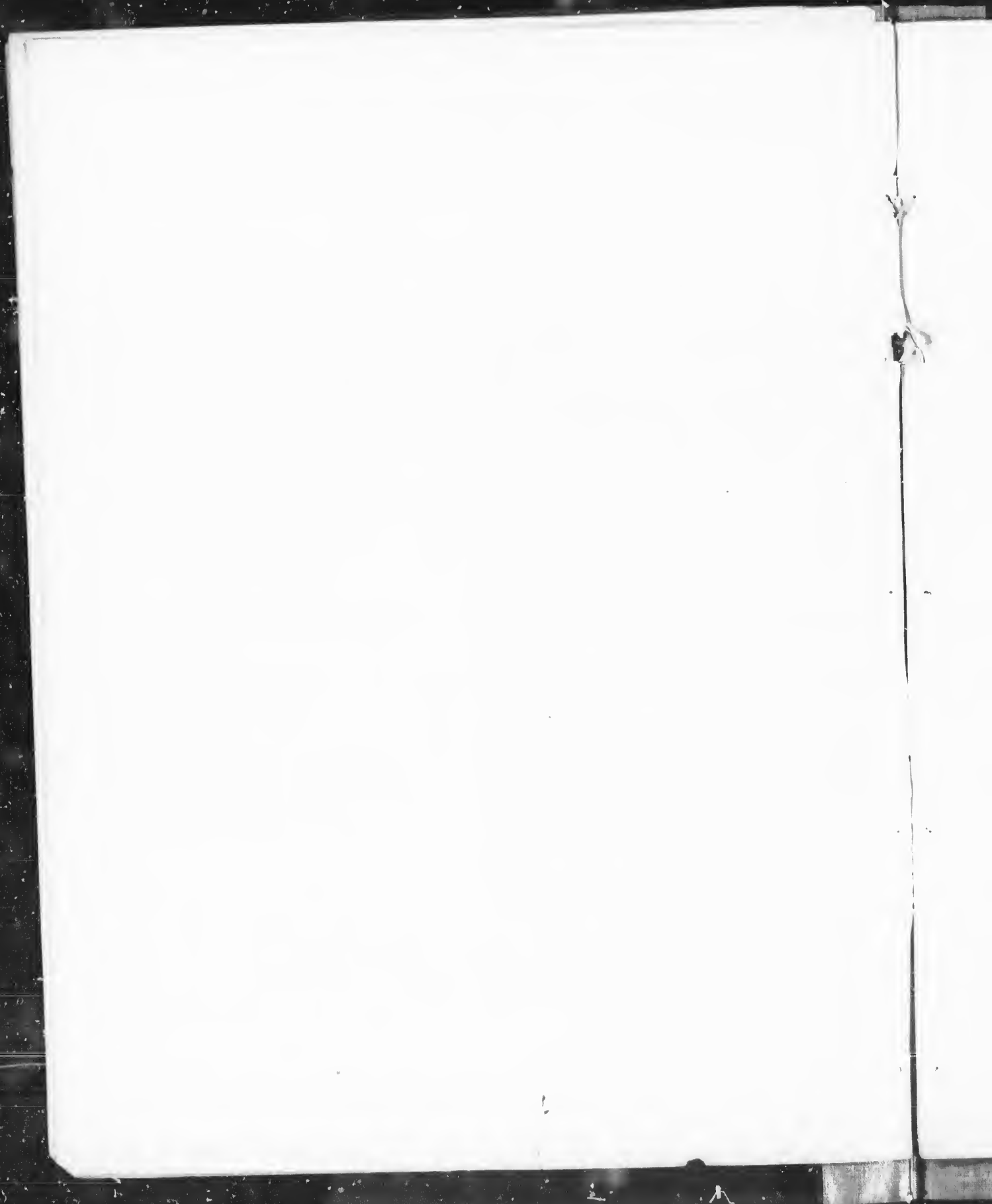
vs.

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

I, James McG. Stewart, of Pictou, in the County of Pictou, barrister, make oath and say:

1. I have carefully examined the papers on file in the Prothonotary's Office, in Pictou.
2. This suit was commenced by writ of summons, and writ of attachment, issued on the nineteenth day of September, A. D. 1876.
3. Pleas to this action were filed on the 16th day of March, A. D., 1877.
4. The said suit has been five terms at issue.
5. No notice of trial has been given in this cause for the present term of this court.
6. I personally served notice of *non pros* herein on the plaintiff's attorney, by giving the same to him in the court room, on the 16th day of June, A. D., 1879, being the last day of the June Sittings of this Court at Pictou, now last past.

90



The defendants therefore pray that they may have judgment for their costs of suit herein,
as in case of nonsuit.

JAMES McG. STEWART.

Sworn at Pictou, in the County of Pictou, the fifth
day of November, A. D. 1879, before me,

RODERICK McKENZIE,
Commissioner Supreme Court Co. Pictou.

100

IN THE SUPREME COURT, 1879.

PICTOU, SS.

Cause—DAVID S. FRASER, Plaintiff.

vs.

DUNCAN A. FRASER and FLORA FRASER, *Defendants.*

I, David S. Fraser, of New Glasgow, in the County of Pictou, Merchant, make oath
and say:

1. I am the plaintiff herein.
2. I seriously intend to proceed with the trial of this cause, and great injustice will be
done me if a rule for non pros be granted to the defendants herein.
3. I further say that I have a good cause of action herein on the merits, and I do not ask
for the postponement of this cause for the purpose of delay but that justice may be done
herein.

110

D. S. FRASER.

Sworn at New Glasgow, in the County of Pictou, this
third day of November, A. D., 1879, before me,

G. W. UNDERWOOD,
A Commissioner for taking Affidavits in the Supreme Court of Pictou.

IN THE SUPREME COURT, 1880.

PICTOU, SS.

DAVID S. FRASER, *Plaintiff.*

vs.

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

[H.W.S.]

120

On motion of counsel for the defendants' for judgment of non pros in the above cause, and
on hearing the affidavit in support of said motion and the affidavit in reply, and on argument it

is ordered judgment in case of *non pros* do pass against the plaintiff in this cause, and that the defendants do have judgment and execution for their costs of suit.

PICOU, June Term, 1880.

By the Court.

DAVID MATHESON, *Prothy.*

130

IN THE SUPREME COURT.

PICOU, SS.

DAVID S. FRASER, *Plaintiff.*

vs.

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

I, John S. D. Thompson, of the City and County of Halifax, barrister-at-law of counsel with the above named defendants, do make oath and say as follows:—

1. I was instructed by the attorney of the defendants in the above entitled cause, to enquire of the Honorable Mr. Justice Smith, at Annapolis, on Monday, the first day of October, instant, whether he was prepared to pronounce a decision on the application which had been made to him on behalf of the defendants herein, for judgment of *non pros* when he was presiding at the last term of this Honorable Court at Picton, on which application I was informed he had reserved his decision. I did so enquire on that day, or the following day, and was told by said Mr Justice Smith that his decision was in favor of the application so made for a judgment of *non pros*. 140

2. On the ninth day of October instant, I read in open court at Annapolis, aforesaid, the rule of judgment of *non pros* herein, when Mr. Justice Smith was presiding, and he placed his initials on the margin of the said rule as a direction to the Prothonotary at Picton aforesaid, to sign the same as a rule of Court, as of the last June term at Picton, aforesaid. This being the expressed intention, I afterwards brought the said rule to Halifax, and delivered it to the defendant's attorney. 150

3. In making the enquiry of said Mr. Justice Smith for his decision, and besore he pronounced to me his said decision, I stated that my reason for wishing to obtain a decision one way or the other was that the defendants were under notice of trial for the term of the Supreme Court in Picton aforesaid, which was then approaching.

JOHN S. D. THOMPSON.

Sworn to before me, at Halifax, in the County of Halifax,
this 23rd day of October, A. D. 1880.

WALTER S. DOULL,
Commissioner of Supreme Court, County of Halifax.

160



SUPREME COURT,
PICTOU, SS.

DAVID S. FRASER, *Plaintiff*.

vs.

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

I, James McG. Stewart, of Pictou, in the County of Pictou, Barnister, of Counsel with the defendants' in the above named cause, make oath and say:

1. That the above cause was commenced by writ of summons and writ of attachment issued 170
on the nineteenth day of September, A. D. 1876.

2. Pleas in the above cause were filed on the sixteenth day of March, A. D. 1877, and the said cause was then at issue.

3. On the tenth day of April, in said year 1877, a writ of commission was issued, at the instance of the defendants herein, to take the evidence of witnesses residing in the United States and such commission has since been returned as I am informed and verily believe.

4. At the November Term of this Court, at Pictou, in 1879, a motion was made on behalf of the defendants' herein for judgment of non pros in this cause, and on the said plaintiff's counsel entering into an undertaking on behalf of said plaintiff to try this cause at the next ensuing term of this Honorable Court at Pictou, this cause was passed. 180

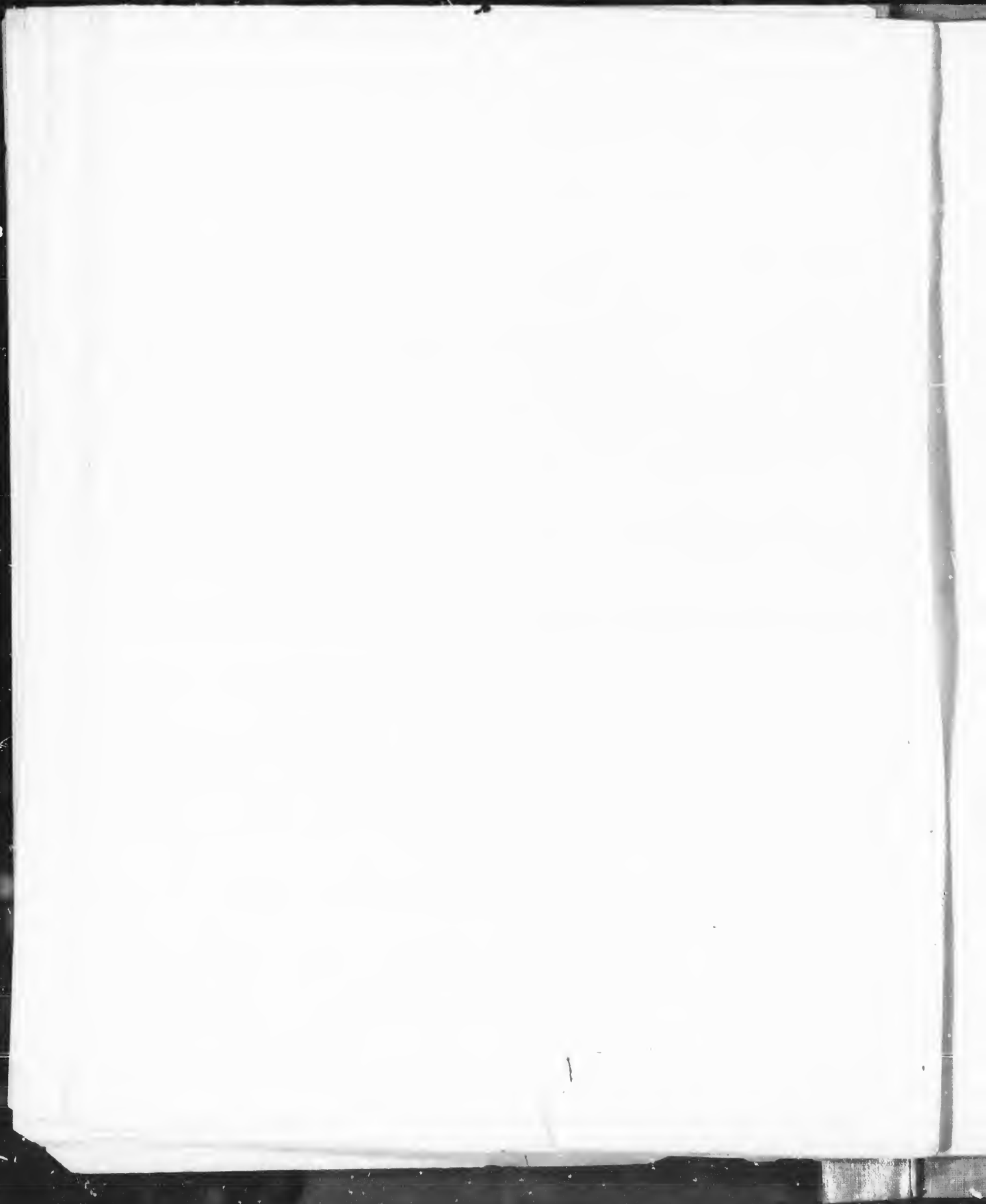
5. At the June Term of this Court, in 1880, I made a motion to the Court for judgment of non pros herein, and the plaintiff's counsel was heard in opposition to said motion, and Mr. Justice Smith, who then presided at the said Court, then stated that he wished to have the papers in the cause, and would give a decision after reading the said papers, and to my knowledge nothing further was done herein by the parties hereto or their counsel or attorneys at said June Term.

6. Annexed hereto, marked "A," is a true copy of the said undertaking to try.

7. Before the present term of this Court, at Pictou, commenced, a rule for judgment as of non pros was filed among the papers in this cause on file at Pictou, a copy of which rule is hereunto annexed, marked B. 180

8. When this cause was called at this term, the plaintiff went to trial and recovered a verdict, and the defendants' counsel took no part in said trial, and gave as their reason therefor that judgment of non pros had already been granted herein.

9. I am informed and verily believe that the defendants' herein have a good defence thereto on the merits.



10. The last June Term of this Court was seventh term at which this cause was at issue.

11. I am of counsel with the defendants herein.

JAMES McG. STEWART.

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

DAVID MATHESON,

Commissioner, Supreme Court, County of Pictou.

200

Exhibit A.

IN THE SUPREME COURT, 1879.

PICTOU, SS.

DAVID S. FRASER, *Plaintiff*.

vs.

DUNCAN FRASER and FLORA FRASER, *Defendants*

I hereby undertake, on behalf of David S. Fraser, the above named plaintiff, to try the above cause at the next term of this Honorable Court at Pictou, and in default of the said plaintiff so proceeding to trial, I hereby agree, on behalf of the plaintiff, that the defendant shall be at liberty to enter judgment as of non-suit against the said plaintiff.

Dated at Pictou, the 5th day of November, 1879.

CHAS. D. McDONALD,

For Plaintiff.

Exhibit B.

IN THE SUPREME COURT, 1880.

PICTOU, SS.

Cause—DAVID S. FRASER, *Plaintiff*.

vs.

DUNCAN A. FRASER and FLORA FRASER, Absconding
Debtors, *Defendants*.

[H.W.S.]

220

On motion of Counsel for the defendants for judgment of non pros in the above cause, and on hearing the affidavits in support of said motion, and the affidavits in reply, and on argument :

It is ordered,—Judgment, as in case of non pros, do pass against the plaintiff in this cause, and that the defendants do have judgment and execution for their costs of suit.

Pictou, June Term, 1880.

By the Court.

DAVID MATHESON, *Prothy.*

230



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.

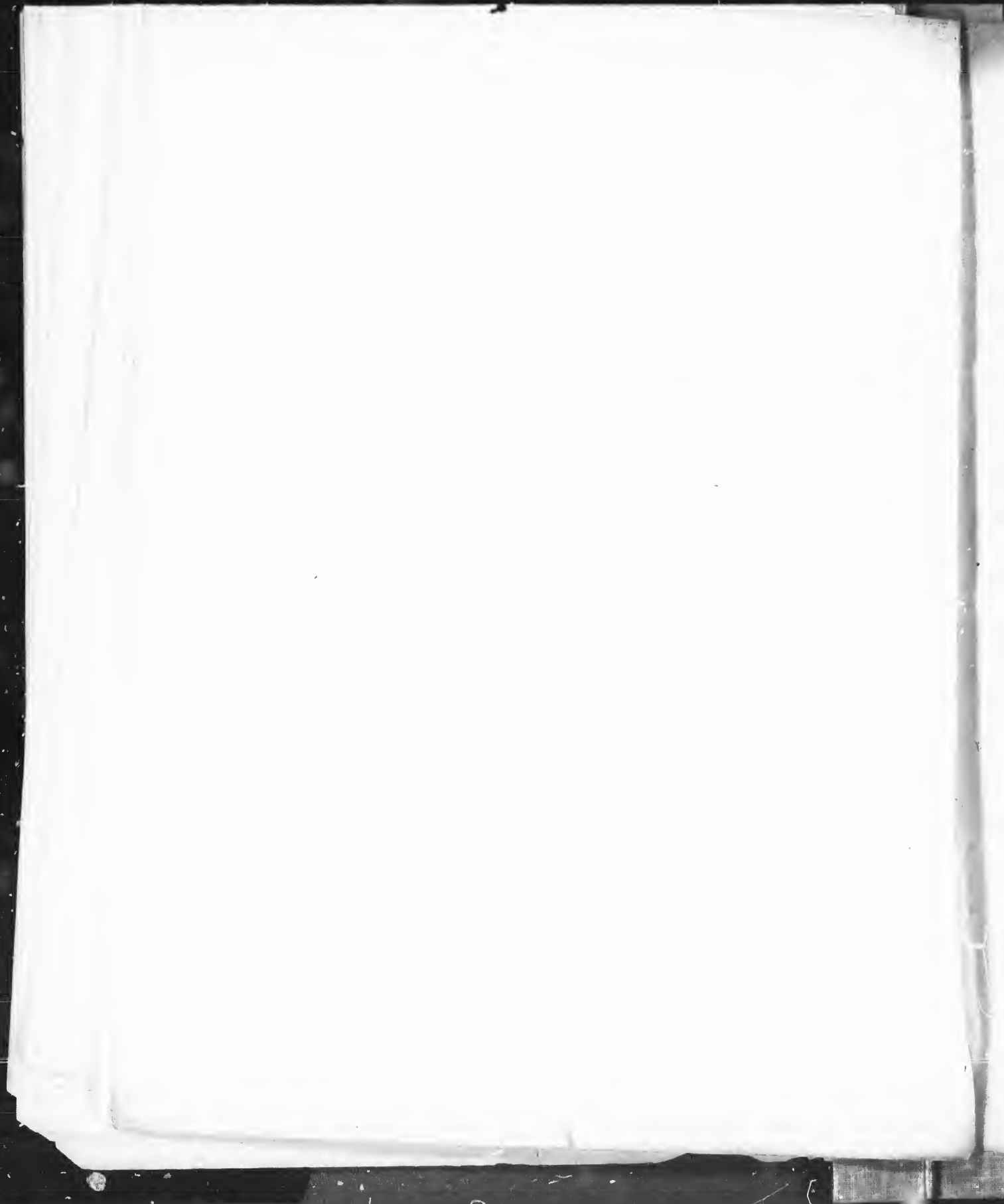
DAVID S. FRASER, *Plaintiff*.

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 thereunto annexed, and the pleadings, affidavits and papers on file



herein, and on motion of counsel for the above named defendants, it is ordered that the verdict of the jury in the favor of the plaintiff, rendered during the present term be, and the same is hereby set aside, with costs, on the following grounds.

1. Because this cause was determined before the said trial.
2. Because by order of this Court, judgment of non-suit was duly ordered to be entered 270 herein, previous to the said trial, of which the plaintiff had notice before trial.
3. Because this cause was tried when the plaintiff was out of Court.
4. Because the defendants were not bound to attend, and were not present at the said trial and were taken by surprise, and on grounds appearing in the said affidavits and papers filed, unless cause to the contrary be shewn within the first four days of the next ensuing December term or session of this Honorable Court at Halifax, and in the meantime let all proceedings on behalf of the plaintiffs herein be stayed.

By the Court,

Pictou, 26th October, 1880.

DAVID MATHESON, *Prothy.*

280

