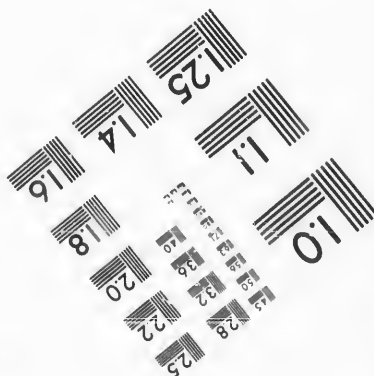
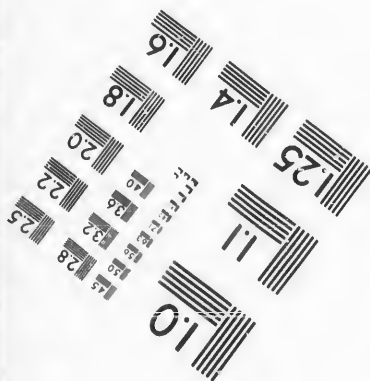
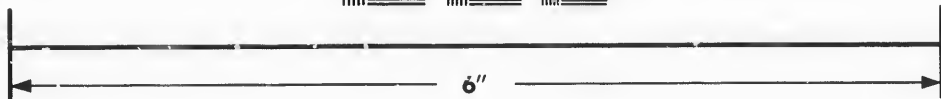
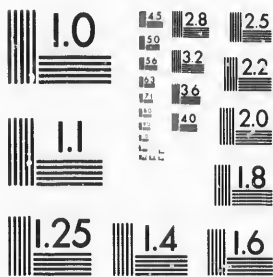


**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

**CIHM/ICMH  
Microfiche  
Series.**

**CIHM/ICMH  
Collection de  
microfiches.**



**Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques**

**© 1987**

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers/  
Couverture de couleur
- Covers damaged/  
Couverture endommagée
- Covers restored and/or laminated/  
Couverture restaurée et/ou pelliculée
- Cover title missing/  
Le titre de couverture manque
- Coloured maps/  
Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black)/  
Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations/  
Planches et/ou illustrations en couleur
- Bound with other material/  
Relié avec d'autres documents
- Tight binding may cause shadows or distortion  
along interior margin/  
La reliure serrée peut causer de l'ombre ou de la  
distorsion le long de la marge intérieure
- Blank leaves added during restoration may  
appear within the text. Whenever possible, these  
have been omitted from filming/  
Il se peut que certaines pages blanches ajoutées  
lors d'une restauration apparaissent dans le texte,  
mais, lorsque cela était possible, ces pages n'ont  
pas été filmées.
- Additional comments:/  
Commentaires supplémentaires:

- Coloured pages/  
Pages de couleur
- Pages damaged/  
Pages endommagées
- Pages restored and/or laminated/  
Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées
- Pages detached/  
Pages détachées
- Showthrough/  
Transparence
- Quality of print varies/  
Qualité inégale de l'impression
- Includes supplementary material/  
Comprend du matériel supplémentaire
- Only edition available/  
Seule édition disponible
- Pages wholly or partially obscured by errata  
slips, tissues, etc., have been refilmed to  
ensure the best possible image/  
Les pages totalement ou partiellement  
obscurcies par un feuillet d'errata, une pelure,  
etc., ont été filmées à nouveau de façon à  
obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
								✓			

The copy filmed here has been reproduced thanks to the generosity of:

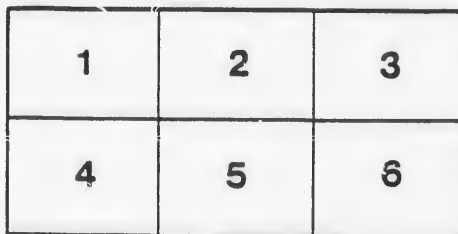
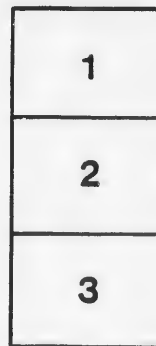
The Nova Scotia  
Legislative Library

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol  $\rightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

The Nova Scotia  
Legislative Library

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole  $\rightarrow$  signifie "A SUIVRE", le symbole  $\nabla$  signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

NOVA SCOTIA  
LEGISLATIVE LIBRARY



PROVINCE HOUSE

7477  
Box 117.

---

In the Supreme Court,  
1881.

---

WELLWOOD REYNOLDS, *Plaintiff,*  
*vs.*  
WILLIAM DITCHMAN, *Defendant.*

---

PAPERS FOR ARGUMENT.

---

FRED. J. TREMAINE, *Plaintiff's Atty.*  
ROBT. SEDGWICK, *Defendant's " "*

---

Index

	Page
Deposition of Thos Reynolds	7 to 9
Deed to Plaintiff	10-
Exhibit H.M.D 2	7 to 9
do do 3	9
do do 4	10
do do 5	11
Minutes of Trial	2 to 6
Mortgage (Reynolds to Payzant)	9
Pleas	1 to 2
Plea adia	2
Rule nisi	7
Record - (Reynolds v Reynolds)	10
Sheriffs Return - do -	11
Writ in Ejectment do	11
Writ Reynolds v Ditchman	1

# W R I T.

HALIFAX SS. VICTORIA, *by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, &c.*

[L. S.]

TO THE SHERIFF OF THE COUNTY OF HALIFAX, OR TO ANY OTHER SHERIFF :

We command you to summon William Ditchman, the younger, of Upper Musquodoboit, in the County of Halifax, Yeoman, the defendant herein, to appear in the Supreme Court as Halifax within ten days after service of this writ, at the suit of Wellwood Reynolds, the plaintiff herein, who says that the said defendant converted to his own use, and wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods—that is to say, one ~~frame~~ <sup>frame</sup> house. 10

Also, that the said defendant converted to his own use and wrongfully deprived the the plaintiff of the use and possession of the plaintiff's goods—that is to say, one thousand rafters, one thousand planks of wood, one thousand boards, one thousand joists, one thousand spikes, hinges and bolts.

Also, that the said defendant wrongfully deprived the plaintiff of the right to sever and to remove a certain fixture to wit : one frame house attached to the freehold of a certain lot of land at Upper Musquodoboit, in the county of Halifax, known as the Reynolds Homestead.

And the plaintiff claims five hundred dollars damages.

Issued this 22nd day of September, A. D., 1879.

FRED. J. TREMAINE, *Atty. of Plaintiff.*

(Sg'd) M. I. WILKINS, *Prothonotary* 20

## PLEAS.

HALIFAX SS IN THE SUPREME COURT, 1879.

CAUSE, } WELLWOOD REYNOLDS, *Plaintiff.*  
          } *vs.*  
          } WILLIAM DECKMAN, *Defendant.*

1st. The defendant, by Robert Sedgwick, his attorney, for a first plea as to the first count of the plaintiff's declaration, says that he did not convert to his own use, or wrongfully deprive the plaintiff of the use and possession of the plaintiff's goods—that is to say one frame house, as alleged. w.c.



81

2. And for a second plea, the defendant, as to the said first count, says that the said frame house was not the property of the plaintiff, as alleged. 80

3. And for a third plea, the defendant, as to the said first count, further says that said frame house was the property of the defendant.

4. And for a fourth plea as to the second count of the plaintiff's declaration, the defendant says, that he did not convert to his own use, or wrongfully deprive the plaintiff of the use and possession of the goods in the said count mentioned, as alleged. 15

5. And for a fifth plea, the defendant, as to the said second count, further says that the said goods were not the property of the plaintiff, as alleged.

6. And for a sixth plea, the defendant, as to the said second count, further says that said goods were the property of the defendant. 40

7. And for a seventh plea, the defendant, as to the third count of the plaintiff's declaration, says that he did not wrongfully deprive the plaintiff of the right to sever and remove the said fixture, as alleged.

8. And for an eight plea, the defendant, as to the said third count, further says that the said frame house was not a fixture, and he did not remove the same from the said premises.

ROBERT SEDGWICK, *Def't's. Atty.*

*y/*  
To the Plaintiff or his Attorney

### ADDED PLEA.

The defendant, by Robert Sedgwick, his attorney, by leave of the Court, to the first and second counts of the plaintiff's declaration, says that, at the time of the alleged conversion, the plaintiff was not possessed of the house or goods in said counts mentioned. 50

ROBERT SEDGWICK, *Def't's Atty*

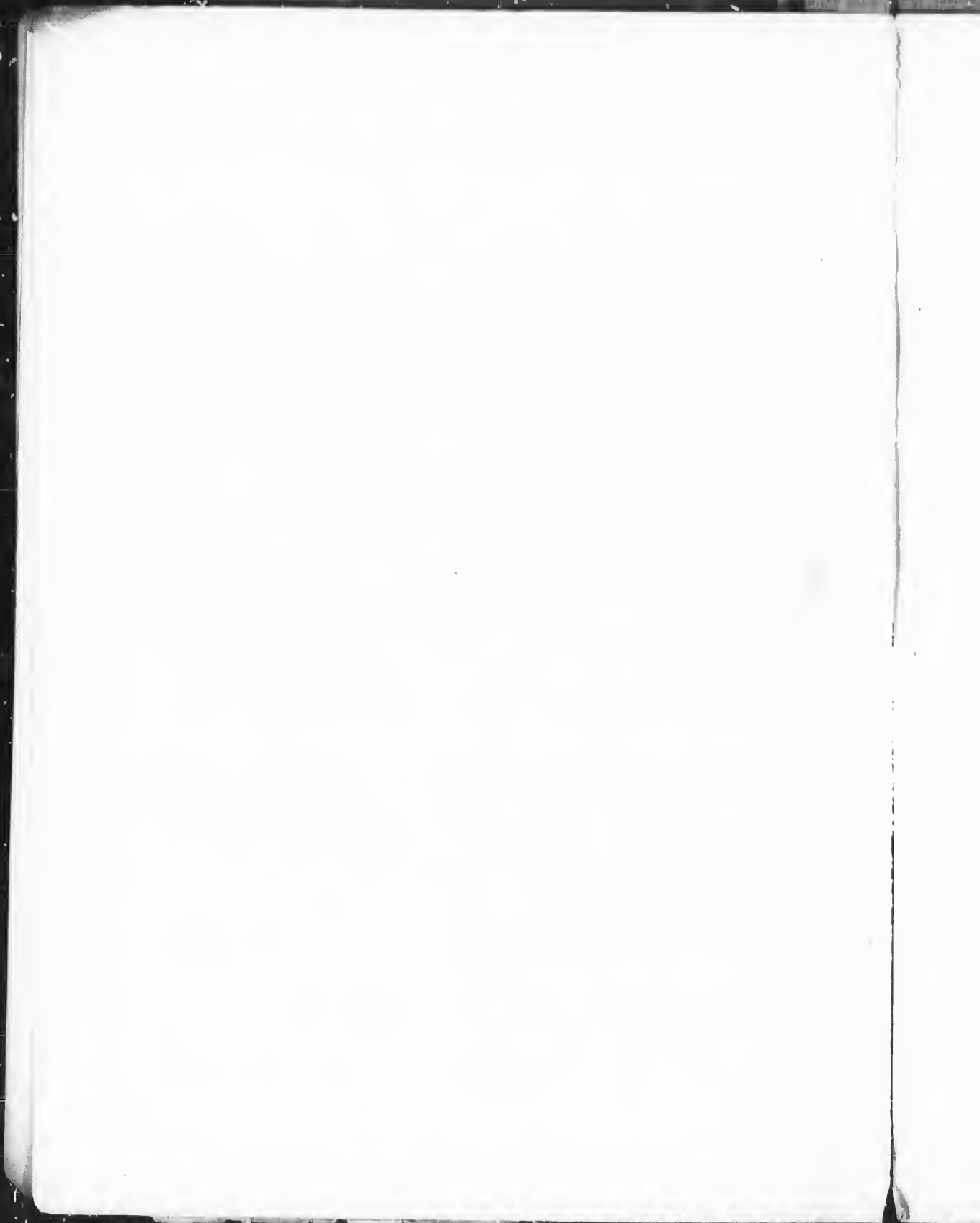
To the Plaintiff or his Attorney.

## MINUTES.

SUPREME COURT, PORT HOOD, 24TH NOV., 1880.

W. REYNOLDS vs. DECKMAN.

W. REYNOLDS, sworn:—Notice to produce, marked H. MeD. 1, tendered, under affidavit. Mr. Sedgwick objects that affidavit is not sufficient. I receive the notice and affidavit. Mr. Harrington calls upon Mr. Sedgwick for the production of the papers mentioned in the notice. They are not produced. I know Thomas Reynolds. I last saw him last April. I purchased a ticket for Colorado then, and saw him start on board the train. Did not see him in the Province since then. Deposition tendered, read H. MeD. 2. I know Jas. H. Reynolds, I made a verbal agreement with him and I rendered him his account. This was in July, 1870. He was to pay me \$1200 the first October, and I was to give him a warranted deed of the place—that is the western half of the Reynolds homestead. He took possession of it the latter part of July, the same year He did not pay the money. He remained in possession till the 2nd ~~Jan~~ 1873. He then removed the house to the place of the defendant. There was no house there when he entered upon the land. He put the house there in the fall of 1870. He took the house off James Miller's property. He afterwards put a cellar under it. I did not see him build a wall there. The house 60



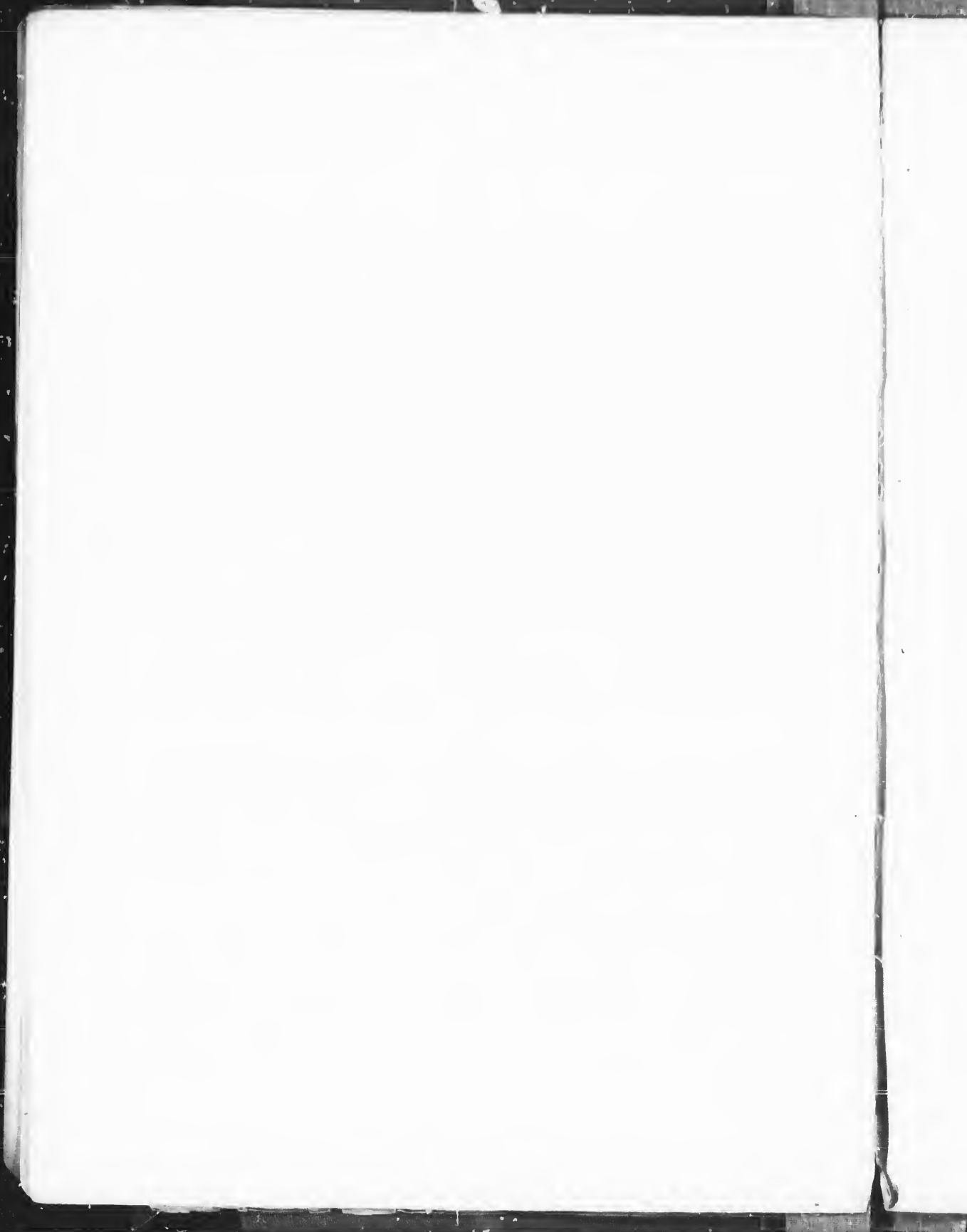
was standing level, and the house was banked up to the sill with earth. He then resided in the house with his wife and family. He did not pay the interest or principal or rent. I saw the premises after the house had been taken off. It was taken on the 2nd Jan., 1878. I saw the house on the highway, and the teams standing there. I knew it. This was before I had a trial with him, and after I instituted proceedings. I went to see the place, and took measurements. The foundation was 22 by 28. The foundation was made of building stone; a stone wall being at the south-west corner and running south thirteen feet, down to the bottom of the cellar; then there was an underpinning to the south-east corner of the house, about 13 in. over ground, and 18 in. to 2 ft thick. The underpinning had been broken down to take the house away. The underpinning ran to within three or four feet of the N. E. corner, and there was then a wall sank down three feet, at least three or four feet around each side of the corner; then there was a drain running to the brook about five feet deep; then the underpinning went along the north side the whole length; around the west side there were eleven feet of underpinning from the corner, and the balance was cellar wall from five to six feet. There was a post in the cellar at the corner of it under the middle of the house, which, if there was a beam on top of it, would make the cellar about 5 feet 10 inches. The cellar had been dug with clay on the bottom. The bottom of the cellar was drained out west. All the underpinning above was broken down, and also the wall level with the ground, but the stones were there. There was no cellar when I sold him the place. The banking would be broken down in moving the house. The most of the store was taken from an old house that I formerly built on another part of the land. Half the houses at Musquoboit are built the same way.

*Cross-examined by Mr. Sedgwick*—At the time I sold to Reynolds my Deed was not on record. it was in my possession. I agreed to pay my father \$40 a year as long as he lived. I re-recorded the Deed two or three years after I agreed with Reynolds. This is my signature to paper H. McD., 3. I owe John Y. Payzant all the principal, and some of the interest (objected to). On the 13th of May, 1876, James H. Reynolds was in possession under his agreement. The house was built on the property described in paper H. McD. 3. I was in Musquodoboit in September, 1878, and last Sept. Thomas told me defendant was living in the house when he made the demand. Thomas had no authority to take the house away. I did not employ any person to take the house away. The wall was two feet high in front. I found one block of wood laid across under the north-west corner. I do swear that the sills of the house rested upon stone, except the block that I referred to. I say this because I saw no other wooden blocks. I will not swear that there had not been other blocks there, but I do not believe there were. I did not see a block in the centre of the building on the south side. The cellar will hold about 200 bushels of vegetables.

*Re-examined by Mr. Harrington*—In reference to the question as to the block on the south side of the building; there was a timber which rested on a block in the centre of the house, and projected out beyond the wall on the south side about a foot. I saw it there after the house was taken. It rested on the cellar wall. I saw the centre post. The wall was built up on each side of it. I swear it rested on stones.

C. S. HARRINGTON, sworn—I procured this document, H. McD. 4, from the Prothonotary here in court. [Mr. Harrington tenders the papers as Record.—Mr. Sedgwick objects. It does not shew the date of judgment. It purports to be signed after the commencement of this suit. No evidence that judgment was entered. Record not binding upon the parties in this suit.] I decline to receive the paper in evidence.

JOHN REYNOLDS, sworn—I am brother of Plaintiff. Heard his evidence to-day. My residence is 40 to 50 rods from where the house stood. I remember when the house was put upon the property. I think it was in the fall of 1870. There was a barn formerly upon the premises, which stood about 25 feet from the highway. I assisted in hauling the house in the fall of the year. We left it resting on blocks and levelled. Reynolds moved into it the same season. I assisted in digging the cellar. One of the drains, the south one, was dug at the same time—that was the following fall. It was a cottage-house, about 22x28. It was worth \$400. The neighbours and I assisted in building up the wall. The cellar was about 12x12. The stones of



the wall were quarried stones. We started it from the bottom of the cellar and it was fully six feet high. The sills of the house rested on the top of the wall. The wall went about a foot over the surface. I had nothing to do with the underpinning, except the cellar wall. The wall was about two feet thick. I saw the underpinning. The stick projecting out had remained where we left it when hauling, and the underpinning was built out on each side of it. There were about 24 feet of the sills resting on the cellar wall, and the rest of the sills rested on underpinning built up with stone with facings. The house was banked every winter by throwing up the earth nine or ten inches above the lower part of the sill. The slides were both taken out from under the house; one removed altogether, and the other used to make the projecting support mentioned. It was lying above the ground. There was a stick under one of the corners. I saw the house being taken away in January, 1878. I think on the property occupied by Wm. Dickman. I cannot say who removed it. Since the house was removed I saw the site. The stone and banking were thrown down level with the ground. I saw the men pry up the house first.

*Cross-examined by Attorney-General*—After the house was hauled it was leveled up, and blocked the first year. The cellar wall was all done in one day. The first winter there was no cellar. No mortar was used in the wall. The house was bought for \$300 I think. The object was to have a cellar wall, and if the wall was not built the earth would fall in. I saw one of the runners at the highway. I saw no levelling except what we took part in. I don't remember being defendant in his own house in the fall of 1877, that the whole place was not worth more than \$700. I might have put that value on the farm without the house. I think it would be near it. I looked at the place as well sold at \$1200. In 1871 I do not recollect, on my son's property, saying to James H. Reynolds that he should not have been charged more than \$700 or \$800 for it. In the fall of 1877 I remember of having a conversation with him in my barn. Don't remember telling him he had a perfect right to remove the house.

CHARLES REYNOLDS sworn:—Plaintiff is my uncle. I know the house referred to. I was present at its moving. Got there after it was ten rods away from the place it stood. Defendant was there. He worked, prying and pulling the building. I saw him at work moving. I drove a team. Deckman was there all the time. He lived on the place we hauled the house to all the time, and resided on that place since. He has no family. I know John Deckman. He told me he got a letter from Mr. Tremaine, Wellwood Reynolds' lawyer, forbidding him having anything to do with the house. This was a fortnight or three weeks before the house was hauled. I saw the letter. He showed it to me and asked me to read it. The house is worth \$300 or \$400.

*Cross-examined by Attorney-General*—John Deckman's wife was there. Defendant handed me the letter. I read it. That is all that was said.

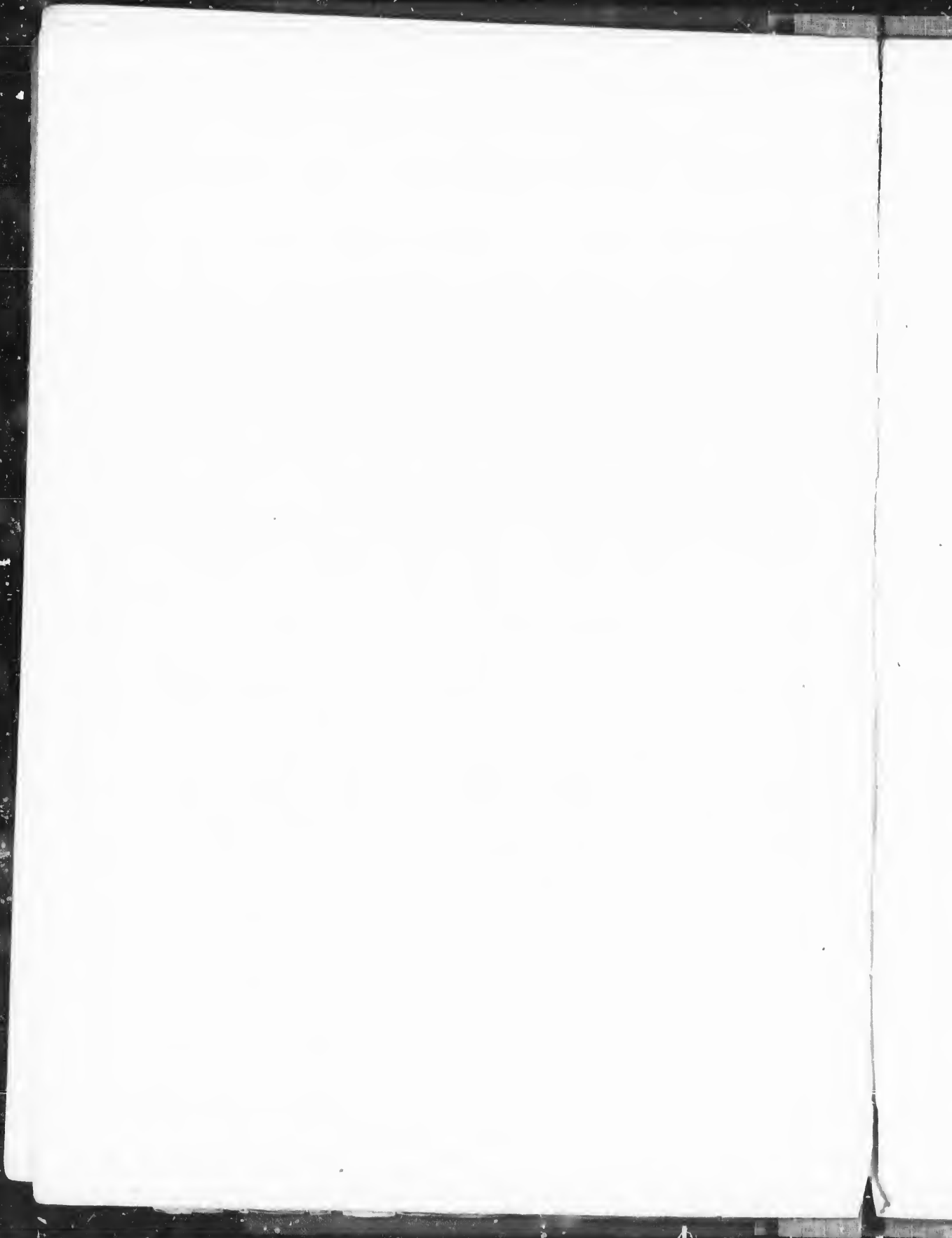
*Cross-examined by Mr. Harrington*—James H. Reynolds was present at the moving of the house.

It is agreed to put in evidence copy in the Registry of Deed from W. Reynolds, senior, to plaintiff, dated 7th November, 1864, Recorded April 6, 76, Cons. \$500. Abutals admitted.

PLAINTIFF recalled:—When I got this Deed I was in possession of the land 10 or 11 years. I had possession since, except when James H. Reynolds had possession. I paid my father \$40 a year to the time of his death.

GEORGE FISHER, sworn:—I helped to build the cellar wall. It was 5 ft 20 or 6 ft from the bottom of the cellar to the lower part of the sill. I saw James Reynolds underpinning the north-east corner. I helped to haul the house there. The house rested on the wall where it was built, like most houses of that class.

*Cross-examined by Mr. Sedgwick*—When the cellar wall was built the level of the house was not changed. I think the cellar was about 12 feet square. I think I would put a better cellar there if it were mine. The house was a foot to 18 inches from the level of the ground. It may have been 2 feet in front. It would be necessary to put stones under the building to support the banking. In the spring the banking is removed. It was stone taken out of an old cellar. Very



nice men. I know six men who worked at the wall.

Writ in this cause put in and read.

PLAINTIFF RESTS.

The ATTORNEY-GENERAL for nonsuit:—No proof of ownership of property; no title; no evidence of conversion; James H. Reynolds had ~~no~~ right to remove; plaintiff cannot recover on trover court.

Mr. Thompson tenders mortgage H. McD., 3. Objected to. Read.

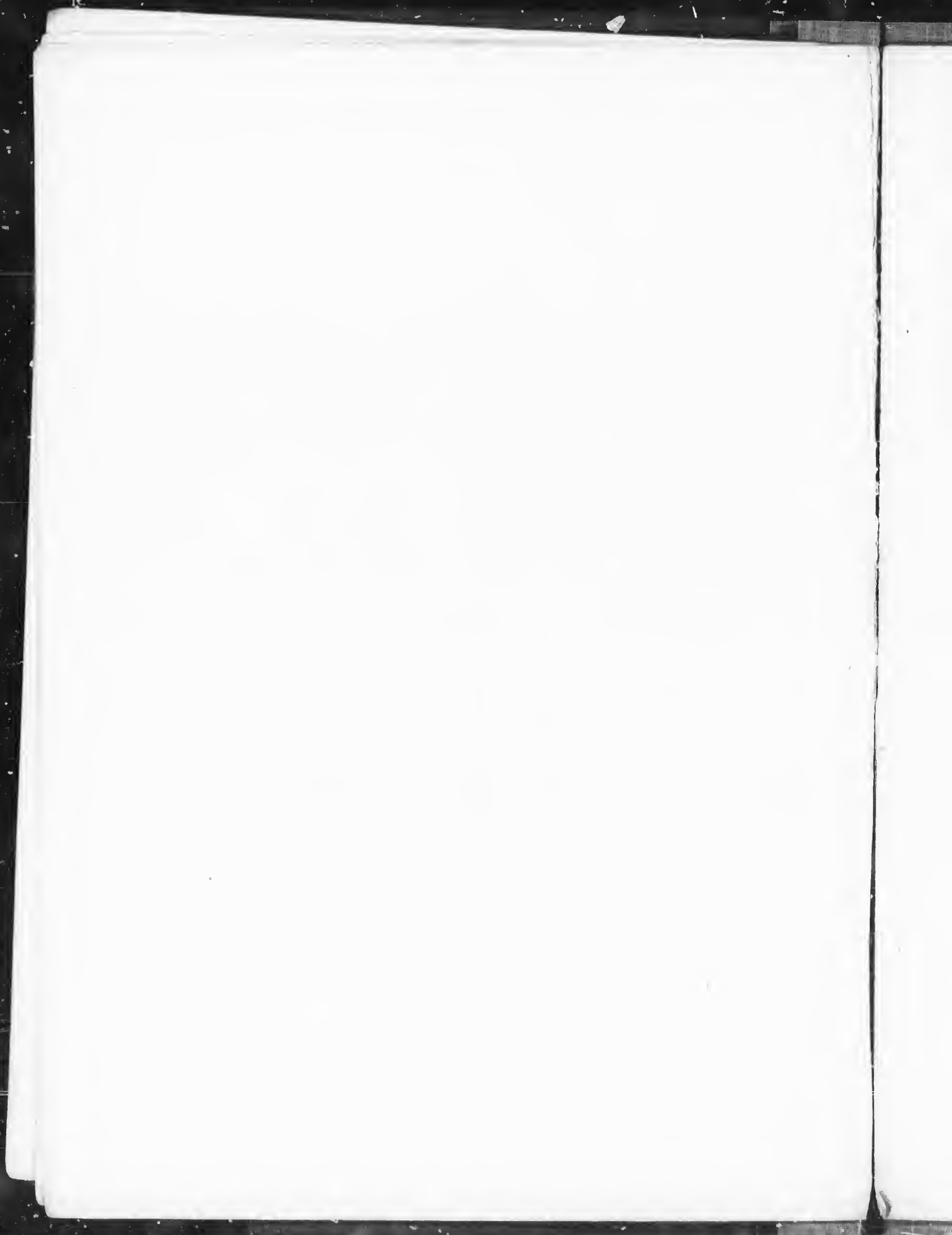
JAMES H. REYNOLDS, sworn:—I bought the house in question from Thomas Reynolds for \$300.—he to remove it on the place. It was levelled up on blocks. That level was never touched after. The two corner blocks were only once removed after. One at the south-west corner and the other at the north-east corner. There were blocks under eight different parts of the house, and all but the two mentioned remained, the house continuing to rest on them. The next fall I dug a hole for a cellar to put potatoes in, about three feet deep. I could not stand up straight in it. It was not a quarter of the house. I put stones inside to keep the earth from falling in not to make a foundation for the house. There were plenty blocks to hold the house in position without that. The stones broke up smooth. We built the wall as well as we could without tools and with rough stone. If I dug for a cellar I would have made the cellar half the size of the house. There was no stone wall under any other part of the house except as I mentioned under the rest of the house. I threw in a lot of loose stones to fill up to the sill so as to keep up the banking. I never under-pinned the house. There was no stone wall at the north-east corner. I removed the banking in the spring. I could remove the stones with my hand and crawl under the house. I did so. I could see through from one side of the house to the other under the sills. I could have tumbled down the wall with my hands. It was only raised. The corner of the house might have dropped down on the wall. I sold the house to the defendant before I was served with a writ at the suit of the plaintiff. I was to deliver it on his place for \$180. He paid me. I valued the place at \$400, but I could get no more for it. It would be about 16 years old. The whole place was worth only \$400 without the house. Cut 10 or 11 meadow hay the first, and about 4 or 5 tons of other hay. 12 or 14 acres cultivated.

*Cross-examined by Mr. Harrington*—I used the house for a dwelling house until 2nd Jan'y, 1878. Deckman, defendant, assisted me in taking the house to his premises. The land without the house, is worth only \$400. There 150 or 200 acres clear. About 12 acres under the plough. There is hard wood, principally on the rear. I will not swear that there were not 25 acres under the plough. The cellar would hold 200 bushels. There was no underpinning. The stones were thrown in as a pile of rubbish. Not faced. They were round field stones. It would be impossible to straighten them up. They were put in no position. The timber that projected out was about 11 feet, resting on the ground inside. The inside part of the cellar was faced up with boards. I kept vegetables in the cellar every winter. We had a hitchway from the pantry to the cellar. No steps but the standing earth. I sold the house before I was served with the writ in ejectment, and removed it after that.

DEFENDANT called:—I bargained for the house about the 1st December, cannot say exactly. Saw it before it was removed. There was nothing under the house that I would call underpinning. At the south-west corner there was a stone that the house settled down upon, and I could see between the house and the stones, except there and where it was resting on wooden blocks. It did not rest upon stones except at the S.W. corner. I had to stoop down in the cellar to get in. The cellar was not more than three feet deep. I bought 400 acres adjoining the lot on which the house was. It was better than his. I paid \$400 for it (Objected to.)

*Cross-examined by Mr. Harrington*:—I assisted in removing the house to my own premises. I will not say that the stones at the north-east corner did not go down three feet under the surface. There was nothing resting on the stones. The house did not come in contact with the stones. It was above them. Some of the stones might have been touching the sill of the house, but they





were loose. The house rested on the corner of the cellar wall, and that was the only stone was that supported the house. There might have been some chance stones here and there touching the sill. The house rested on seven wooden blocks. It was not 5 ft 6 from the bottom of the hole to the floor. There was plank on the bottom of the hole. I think I saw banking there of chip dirt. When getting ready to ~~have the house they putted down the stones with their fingers.~~ I did not see the house banked all round. I lived some distance from the place. hand

WM. C. DECKMAN, sworn:—I am defendant's father. I saw the house before it was removed. It rested on wooden blocks, except one corner. The blocks rested on the ground. There was no stone wall under the house that I would call underpinning. I saw the light between the sills and the stones all round before they commenced moving it. The house rested on seven wooden blocks. There were two blocks at the west end of the building. One of the sills was rotten where it rested on the centre block. 230

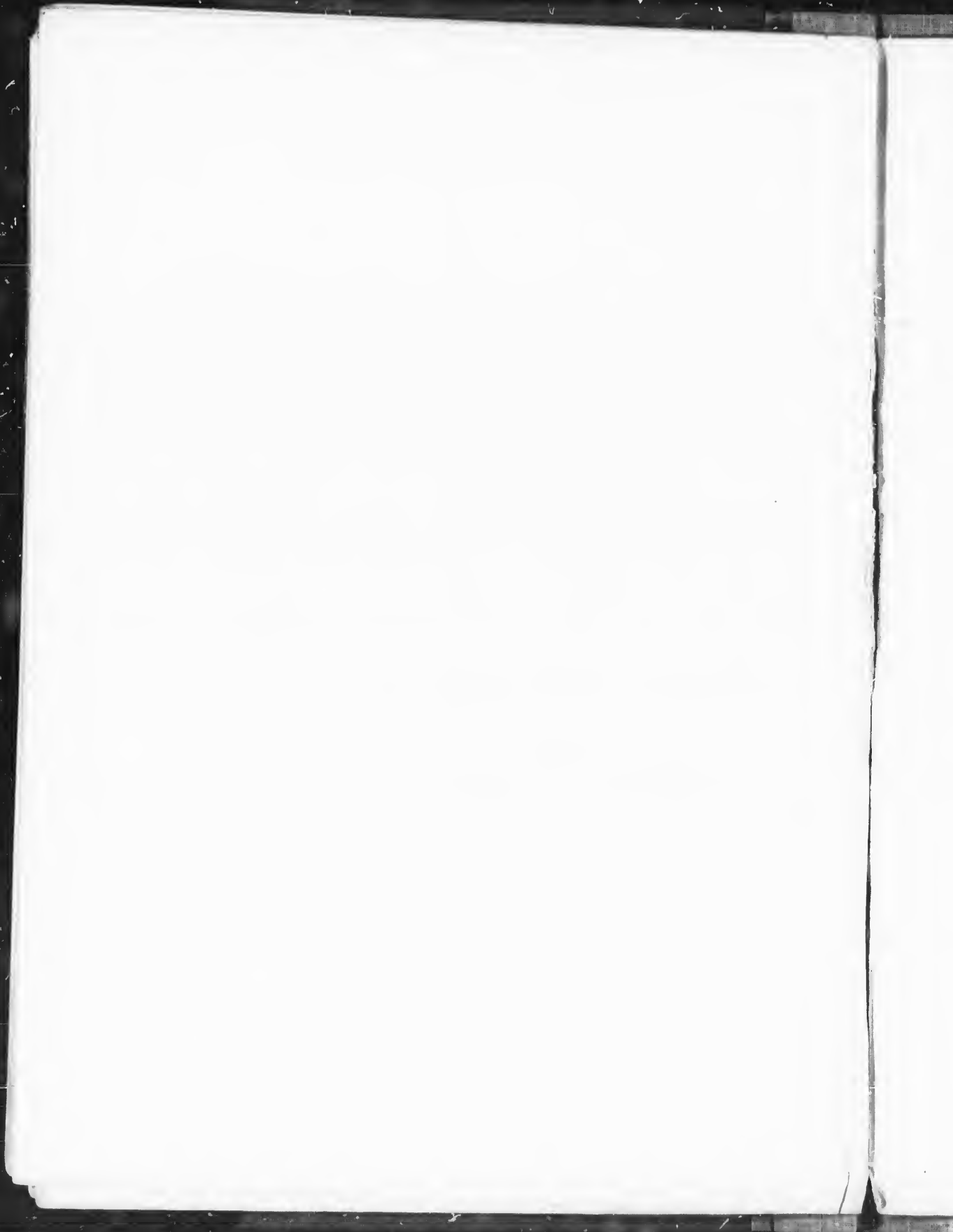
*Cross-examined by Mr. Harrington*—I was only once at the house before it was removed three or four days. It was not hanked. The wall around the cellar was not level on the top. The house did not rest on any part of it but the corner stone. There were two or three inches of a difference in the level. The wall was on one side of the projecting timber and loose stones on the other. The wall was not as high as the timber. The sill rested on the timber. At the corner opposite the cellar were loose stones. I saw no built stone there. I went to examine and see if the sills were rotten. When the house was removed the blocks were embedded in the soil two or three inches. 240

WM. HOLMAN, sworn:—I live near the property in question and superintended the moving of the house. I saw the house before it was raised. On the south-west corner a wall existed, extending north 11 feet, and west 9 feet under the sill. I will not swear whether the house rested on that wall. On the west end there was a block of wood. I cannot say what was under the north-west corner. Under the middle of the north end there was wooden block. In the rest of it there were stones laid in. I would not swear that it was underpinned.

*Cross-examined*:—The stones were up 18 inches. Will not swear they went up to the sill. I will not swear it was banked when I saw it, and won't swear to the character of the wall, or how much of the house rested on it. I measured the cellar after the house was taken away. There was a flue from the cellar beams. It is admitted that the writ (H. MeD. 5) was served on the 8th December, 1877. 250

[DEFENDANT RESTS].

Mr. Sedgwick moves to add plea denying plaintiff was in possession.



## RULE NISI.

---

HALIFAX SS      IN THE SUPREME COURT, 1880.

CAUSE, } WELLWOOD REYNOLDS, *Plaintiff*,  
           } *vs.*  
           } WILLIAM DECKMAN, *Defendant*,      260

On hearing read the Minutes of trial herein, and upon motion of counsel for plaintiff. It is hereby ordered that the verdict for the defendant herein be set aside and a new trial had, with costs, upon the following grounds:—1st. Because the same is against law and evidence. 2nd. Because of the improper rejection of testimony. 3rd. Because of the improper reception of evidence; and upon the other grounds taken and argued upon the trial hereof, unless cause to the contrary be shown within the first four days of the ensuing term of this honorable Court at Halifax.

HALIFAX, November 29th, 1880.

By the Court,

M. I. WILKINS, *Prothonotary*.      270

On motion of Mr. S. HARRINGTON, of Counsel with Plaintiff.

(DEPOSITION H. McD. 2)

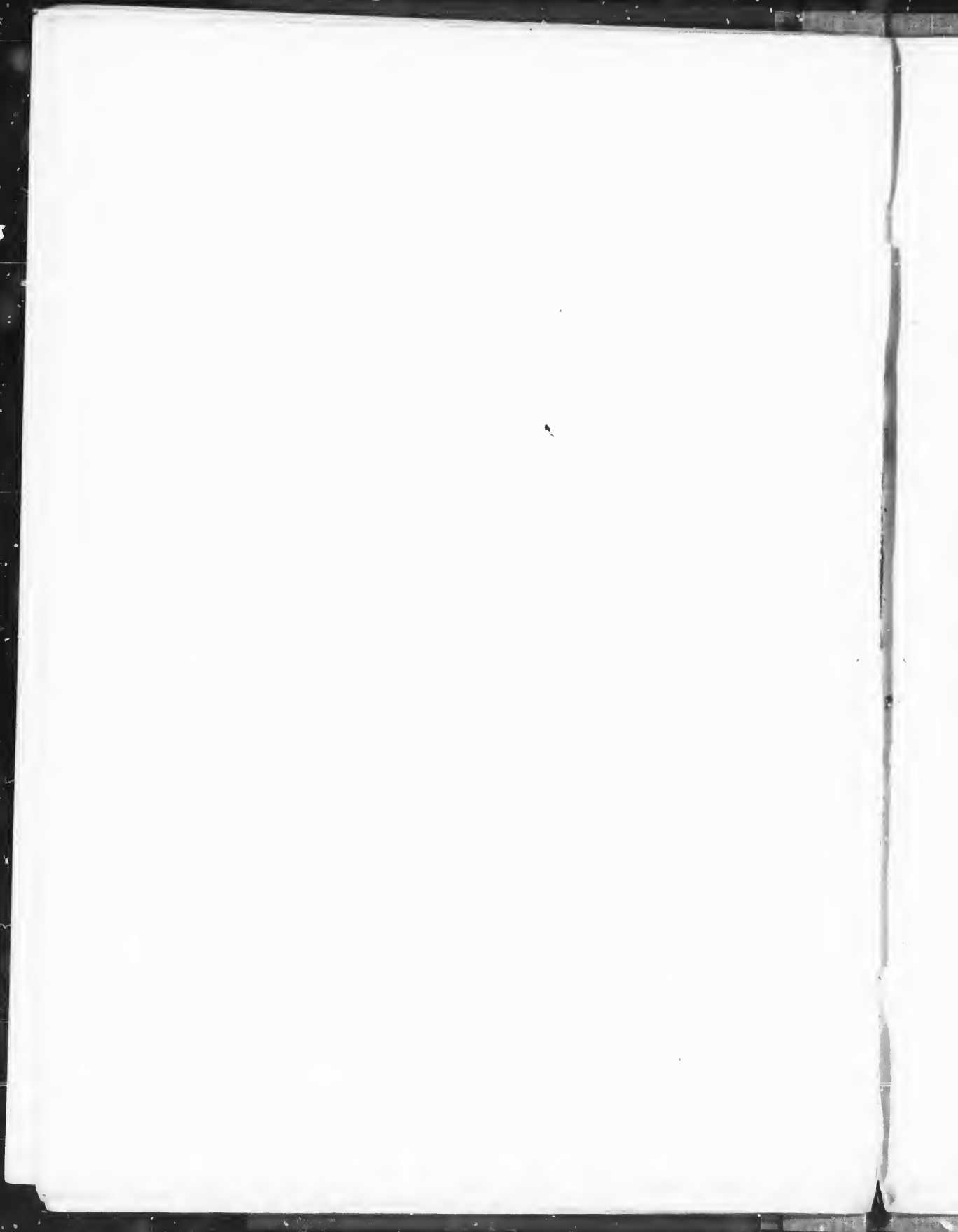
HALIFAX SS.      IN THE SUPREME COURT, 1880.      18  
20  
320

CAUSE } WELLWOOD REYNOLDS, *Plaintiff*,  
           } *vs.*  
           } WILLIAM DITCHMAN, *Defendant*.

THOMAS REYNOLDS, a witness about to leave the Province, sworn and examined on the 13th day of January, A. D., 1880, before me, J. Harvey Frith, a Commissioner of H. M. Supreme Court for the County of Halifax, on behalf of the plaintiff, to be used in evidence in the above cause.

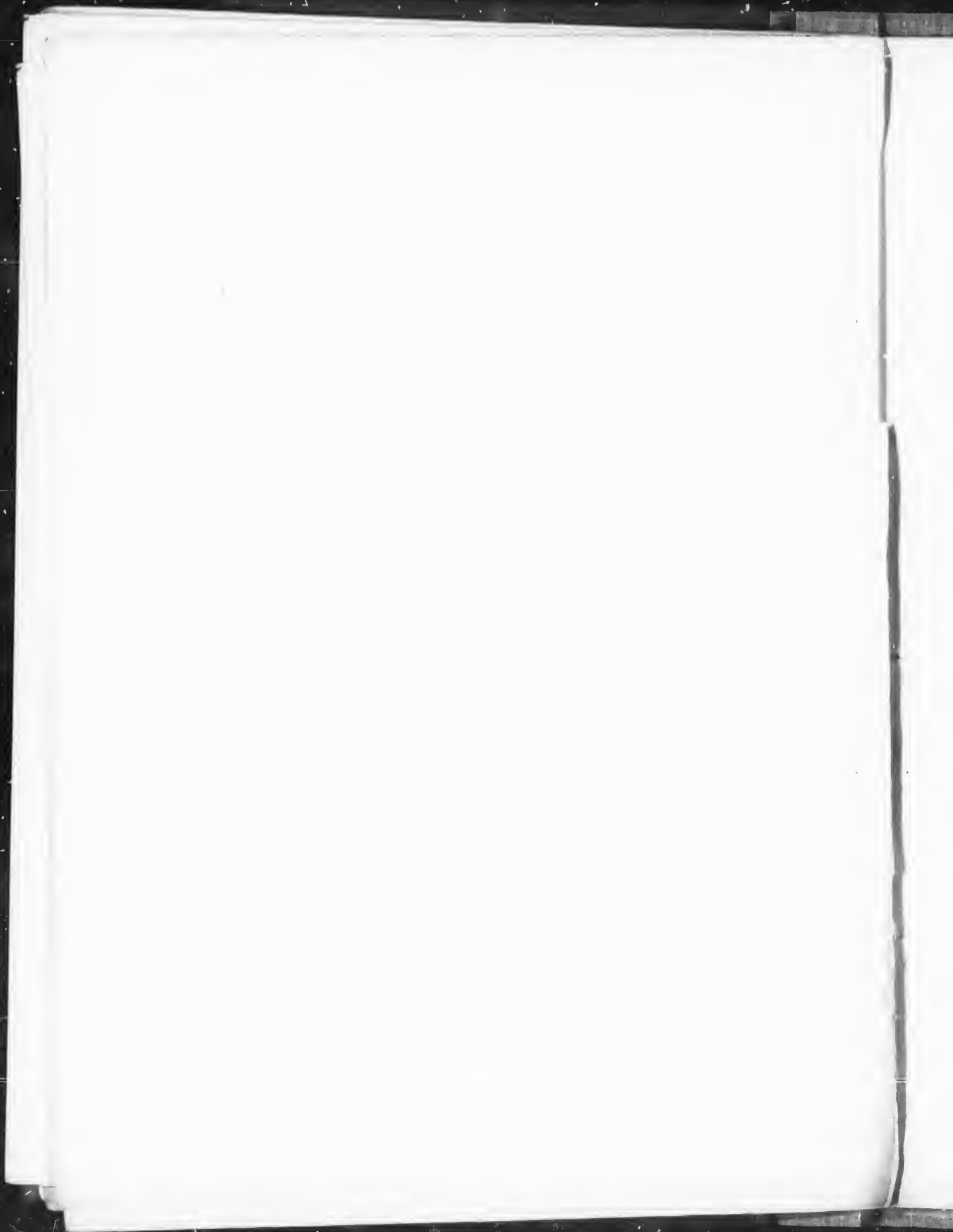
Attending on behalf of Plaintiff,      FRED. TREMAINE, Esq.      280  
   "   "      Defendant,      ROBT. SEDGWICK, Esq.

THOMAS REYNOLDS, sworn, examined by Mr. Tremaine:—I live in Upper Musquodoboit. Am a farmer. Know the Reynolds homestead. It is in Upper Musquodoboit. John, James and Wellwood Reynolds occupied it. No one but Wellwood occupies his portion at present. The parts occupied by the persons I have named are separate and distinct. Someone formerly occupied Wellwood's portion. J. H. Reynolds up to about two years ago, and for eight years previously, J. H. R. occupied it. There was no house there when James H. Reynolds come there. He bought the house from me. It was moved there by me. The time was about 9 or 10 years ago. It was about the time he went on the property. It was within six months. We must have had some conversion or he would not have bought it. Mr. J. H. R. spoke to me about building a house for this property. I told him I could sell him a house cheaper than he could build one. (All objected to. I sold him the house I referred to. I moved and put the house on. I moved it on the property which I understood, at the time, belonged to James H. Reynolds, and which I



understood that he had bought from plaintiff. I left the house there on the timber on which I hauled it. I saw the house soon after. I saw one of the timbers lying on the road some time after. The other timber was taken out and put under the centre of the house. I saw it there and have stepped upon it many a time. I have seen a cellar there which was not there when I put the house there. The cellar was under the house. I did not see it being dug. The depth was about 5 or 6 feet. It was used by Mr. Reynolds for keeping potatoes. The wall which supported the house commencing at a block under the west end of the house underpinned, or stones built up from this block round to the north-west corner; thence east on the south side; thence south along the east side to the corner; thence half way along the south side, then we come to the cellar. The wall goes to the bottom of the cellar and up to the sill of the house. We go around then, that is with the wall, about half way along the west end. The underpinning continued to the block I started from. The underpinning was all of stone, except the piece of timber run across. The piece of timber was put in to raise the house when it sagged. Sometimes the underpinning was banked up with earth, and sometimes not. I know of two drains from the cellar, one running east to the brook the other south-west. They were constructed after the house was put there. This house was a dwelling-house. (Question, with reference to this house being permanent or temporary: what was its character? Answer: I should call it a permanent erection—Objected to.) Mr. J. H. R. lived in this house about 8 years with his family as a dwelling-house. I should say the value of the house was from \$400 to \$500. It was at that time, comparatively new. The size is somewhere about 26x22 or 24. There are three rooms and a pantry on first floor, I think about same on second floor. The house is now on defendant's place. I was present when it was moved off plaintiff's. Defendant was there also. I made a demand for the house in my brother's name on the defendant. I had authority from my brother under the authority of this paper marked A. Plaintiff signed this paper. Also, I demanded the possession of the house. I demanded possession on the 26th of May, 1879. I saw defendant and told him my brother had made me his attorney or agent to take delivery of the house for him and as his (plaintiff's) property. He said that if he owed me anything he would pay me, and ordered me off me about my business. He was then in the house which I demanded. I demanded the house which was hauled off the Reynolds' property, which was the house in which he then was. He did not deliver me the house. I demanded delivery after the house had been moved off the Reynolds' property. James H. Reynolds never to my knowledge used the house for any other purpose but a dwelling. I have been there. I see the house every day from my place.

*Cross-examined by Mr. Sedgwick*—I am brother of plaintiff. This house was originally built about a half a mile east of the Reynolds' homestead by my brother-in-law, James Miller. There was a cellar under it originally. I bought Miller's place. I gave him about £70 for the place. One acre in it. I don't own the Miller place still. I sold the land to George Miller. Reynolds paid me (or was to pay me) about \$500. He has paid me \$200, more or less, when I first moved the house. I raised it from the wall and put the slides under it when necessary. I hauled the house on three slides along the main road to We lwood Reynolds farm. I was about a day hauling it with about twenty pairs oxen. I left the house on the property on the slides, as I bargained to do. The house was placed three or four rods from the limits of the road. The land is pretty level. If anything it slopes to the west. I cannot say that the house was perfectly level. Reynolds previous to this lived in an adjoining house. There were no wooden posts under the house except what I have described. I can not swear that skids were not placed under the four corners of the house soon after I left it. The only foundation of wood I know of was the wooden sleeper or slide left there originally, and a wooden block on the western side of the house. The foundation on the north-west corner was of stones, hauled and built in. The stones, for anything I know, were built in between the sill and the ground. All the stones were placed there before the house was placed there. I never noticed it close enough to discover whether mortar was used. The stones were built in, in wall shape, all around it looked to me. I have looked at it. It looks of the same thickness all around, but I do not know that it is. The cellar, I suppose, would be about quarter of the house. The wall was all around the outside of the cellar. Reynolds was living in the house until it was hauled away. Before the house was underpinned I suppose there were blocks under it. I don't know. They could not work from the inside at the foundation wall without lifting the floor. I suppose the underpinning was placed on the level ground. The only



place where there was regular wall was at the cellar at the south-west. I cannot tell if the inside of the cellar wall was perpendicular or not. I think the depth of the cellar from the surface was about from four to five feet. I did not notice any floor in the cellar. The only wall around the cellar I noticed was inside the house. The plaintiff does not live on the property now. The plaintiff has not lived on it for over twenty years. James H. Reynolds was living at Musquodoboit when the house was moved away. I don't know to my knowledge that my brother ever spoke of the property as James H. Reynolds'. Wellwood told me that James H. Reynolds had bargained with him for the farm. I understood from both of them that there was a bargain between them. 350

(Signed) THOMAS REYNOLDS.

Sworn to at Halifax, in the County of Halifax, this } J. HARVEY FRITH,  
13th day of January, A.D., 1880, before me, } Commissioner of County Court for Co. tlfx.

I CERTIFY that the foregoing deposition of Thomas Reynolds was duly taken before me, the subscriber, at Halifax, in the County of Halifax, on the 13th day of January, A.D., 1880. 360

J. HARVEY FRITH,  
Commissioner of the Supreme Court for the County of Halifax.

(J. H. F.—A.)

HALIFAX, May 1, 1870.

To Thomas Reynolds, Esq.:

I hereby authorize you, and appoint you my attorney and agent in my name, and for me to demand possession from Wm. Ditchman, Jr., of Upper Musquodoboit, farmer, of the house by him purchased and received from James H. Reynolds, which is my property, and notify him that action will be at once commenced against him by me, if said possession is refused. 370

Yours, &c.,

(Signed) W. REYNOLDS.

MAY 26, 1870.

I, Thomas Reynolds, do hereby certify that I went to Wm. Deekman and made demand of the house above referred to, and he refused to give possession and, can prove the same.

(Signed) THOMAS REYNOLDS.

EXHIBIT H, McD., 3.

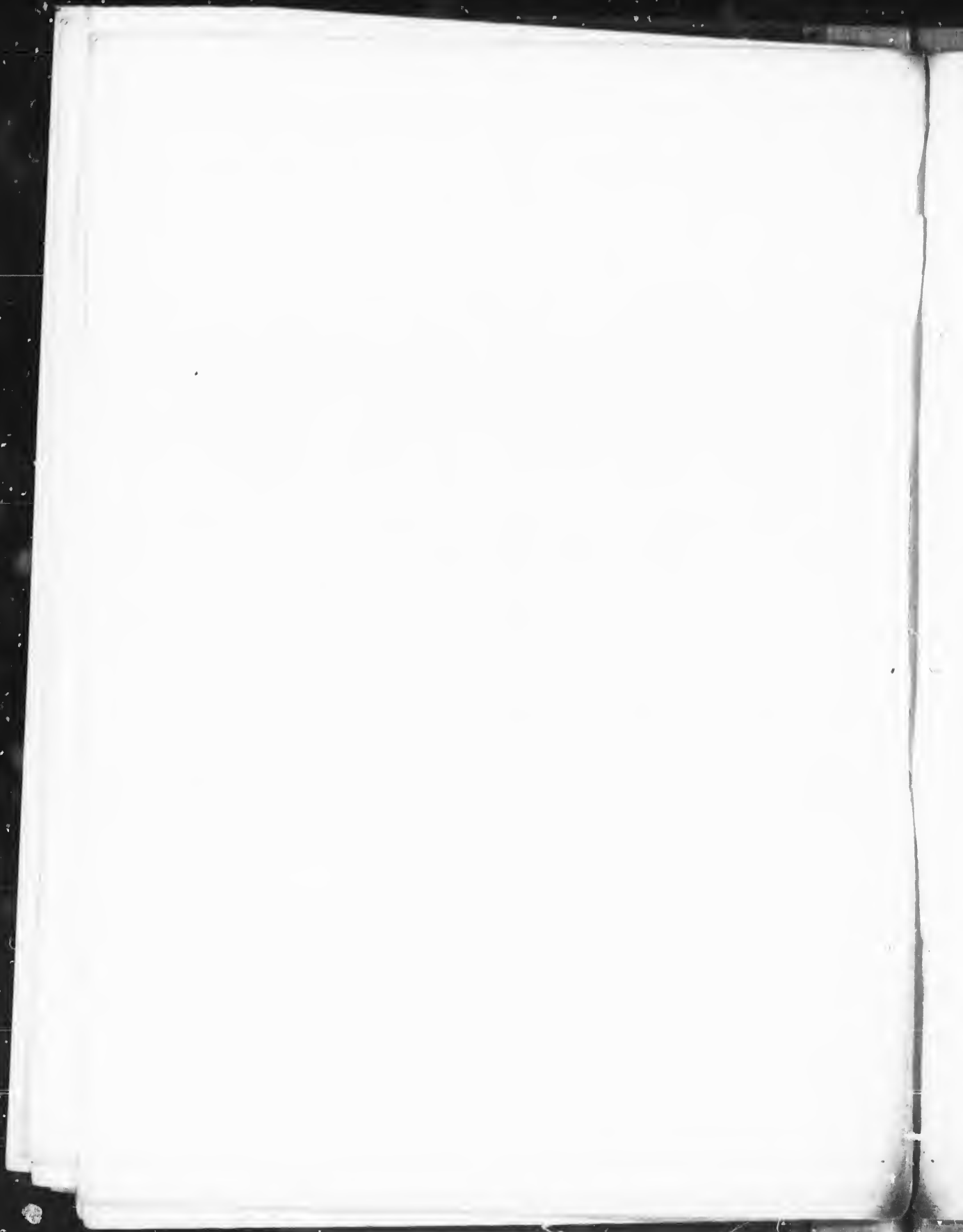
## MORTGAGE.

Wellwood Reynolds and Jane, his wife, to John Y. Payzant. Date 12th May, 1870. Consideration, \$400. Conditioned for redemption in one year. 380

DESCRIPTION:—All that tract of Land situate, lying and being in Upper Musquodoboit, being the western half part of a lot of land known as the Homestead. Commencing at the centre of the gate on the south side of the Post road; thence south 12° east, 56 rods, 10 links to Juniper tree sighted; thence same course 42 rods, 9 links, to corner stake placed in the meadow; thence north 88½° east, 14 rods, 15 links, to corner stake in said meadow; thence south 3° west, 38 rods, to river; thence following the course of the river down stream 8 rods, 31 links to end of drain; thence northerly up said drain 28 rods, 15 links, to a stake; thence westerly 46 rods, 15 links, to corner stake; thence north 15½° west along the east lines of James and George Reynolds' properties to rear line of Fisher's grant; thence eastwardly along the rear of said grant to west line of John Reynolds' property; thence southerly along said west line of John Reynolds' property to a stake on the north side of the Post road; thence easterly 18 rods, 45 links, to the place of beginning. 390

Recorded Book 203, pages 57, 58 and 59.





## DEED.

Wellwood Reynolds, senior, of Musquodoboit, to Wellwood Reynolds, junior, of Halifax.  
Date, 7th November, 1864. Consideration, \$500.

DESCRIPTION:—All that tract of Land lying and being in Upper Musquodoboit, being the western part half of a lot of land known as the Homestead. Beginning at a stake and stones at the margin of the meadow, and running northerly to a stake and stone at the Upper side of the new Gnyshoro' road; thence westerly to a stake and stone on the same side of the Gnyshoro' road; from thence the same course of the north and south lines of the grant, until it meets the said line of the said grant; thence westerly by the rear line until it meets lands deced to George Reynolds; thence by said George Reynolds' lands until it strikes the meadow; from thence to the place of beginning. Also, the Meadow Lot n joining the upland or homestead, to be equally divided between Wellwood Reynolds, junior, and John Reynolds. The said Wellwood Reynolds, junior, to have the western half.

Be it always remembered, that a Bond, bearing equal date with these presents, the consideration thereof being fulfilled shall render this Deed of full force and virtue, otherwise to be null and void.

WELLWOOD REYNOLDS, Sr. [L.S.]

Received from the said Wellwood Reynolds, junior, \$500, being the full consideration money mentioned in the foregoing indenture.

WELLWOOD REYNOLDS, Sr.

Recorded 6th April, 1876.

(H. M.P. 4)

## RECORD.

HALIFAX SS,

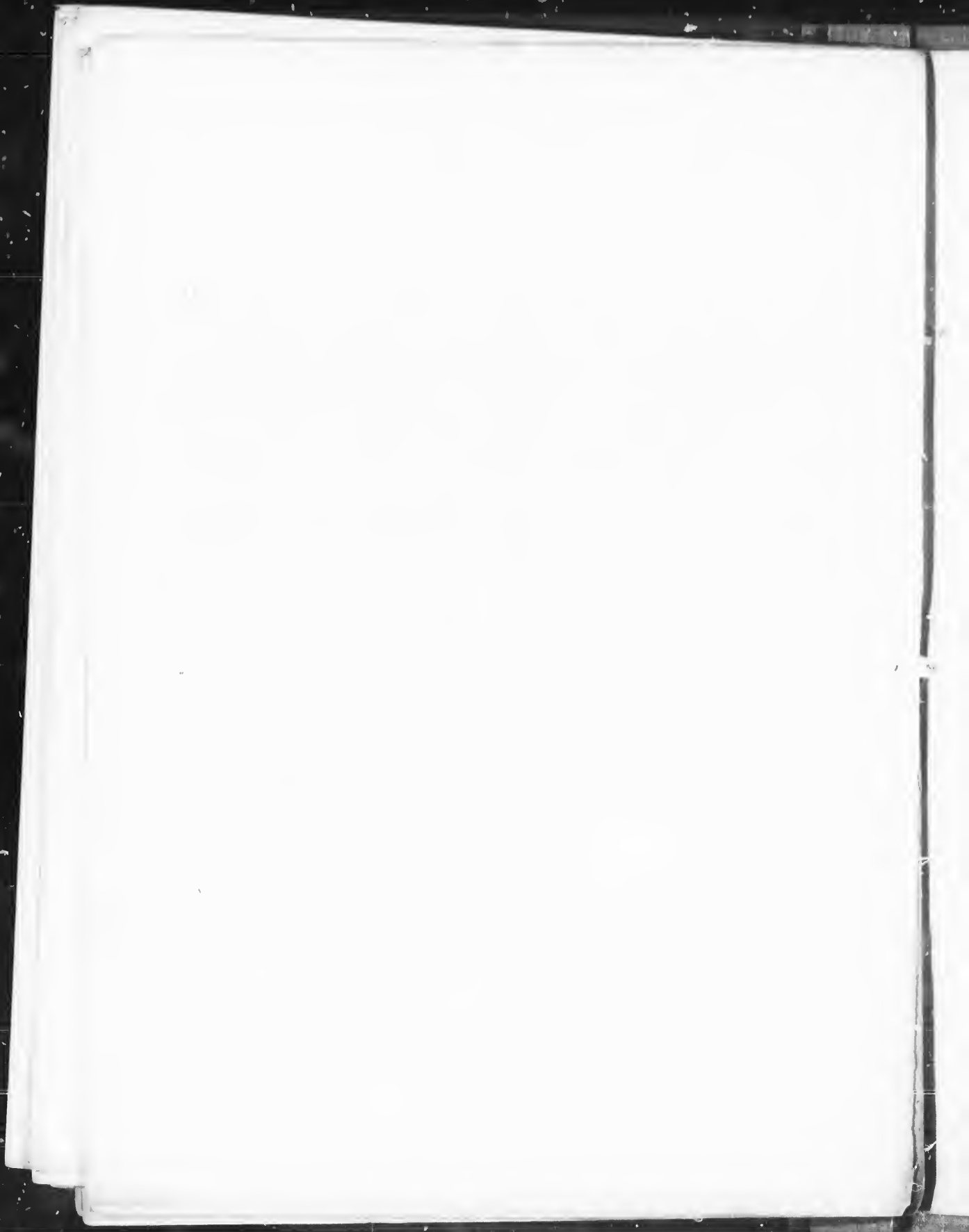
IN THE SUPREME COURT, 1880.

On the 6th day of December, 1877, Wellwood Reynolds, by Fred. J. Tremaine, his Attorney, sued out a writ of summons against James H. Reynolds, of Upper Musquodoboit, in the County of Halifax, and thereby alleged: That the said James H. Reynolds withheld the possession of the land and premises mentioned in the plaintiff's writ and declaration as follows:—All that tract of Land lying and being in Upper Musquodoboit, being the western half of a lot of land known as the Reynolds' homestead. Beginning at a stake and stones on the margin of the meadow and running northerly to a stake and stones at the upper side of new Gnyshoro road; thence westerly to a stake and stone on the same side of the Gnyshoro' road; from thence by the course of the north and south lines of Fisher's grant, until it meets the rear line of said grant; thence westerly by the rear line until it meets lands deced to George Reynolds by said George Reynolds' land until it strikes the meadow; from thence to the place of beginning.

Also, the western half of the meadow lot adjoining the uplands, or homestead, aforesaid, and for the withholding of which he claimed \$200 damages.

And, afterwards, the defendant, James H. Reynolds, by Robert S. Drwrick, his Attorney, appeared in the said cause, and for a plea therein said: That the said plaintiff was not entitled to the possession of the land and premises mentioned in the plaintiff's writ and declaration;

And, afterwards, to wit: on the 26th day of April, in the year 1879, at the Supreme Court, in the City of Halifax, before the Honorable Robert L. Weatherbey, one of Her Majesty's Justices of the Supreme Court, came the parties within mentioned for the trial of said issue. And the said Judge decides the said issue in favor of the plaintiff. That the plaintiff is entitled to the possession of the premises in said writ, mentioned and described;



Therefore, it is considered, that the said Wellwood Reynolds do recover possession of the said house, barn and lands in the said writ mentioned, with the appurtenances, and \$73 60 for costs.

FILED 8th MAY, 1880.

FRED. J. TREMAINE, *Attorney of Plaintiff.* 440

(H. MeD., 5).

**WRIT.—REYNOLDS vs. REYNOLDS.**

HALIFAX SS.

VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c.*

TO THE SHERIFF OF THE COUNTY OF HALIFAX, &c.

WE command you to summon Jas. H. Reynolds, of Upper Musquodaboit, in the Co. of Halifax, Yeoman, to appear in the Supreme Court at Halifax, within ten days after the service of this writ at the suit of Wellwood Reynolds, who says: That the said James H. Reynolds withholds the possession, to which the said Wellwood Reynolds claims to be entitled, of a certain house, barn, and about one hundred and fifty acres of land situate at Upper Musquodaboit, in the County of Halifax, and described as follows:—All that tract of Land lying and being in Upper Musquodaboit, being the western half of a lot of land known as the Reynolds' homestead. Beginning at a stake and stones at the margin of the meadow and running northerly to a stake and stones at the upper side of the new Guysboro' road; thence westerly to a stake and stones on the same side of the Guysboro' road; from thence by the course of the north and south lines of Fisher's grant, until it meets the rear line of said grant; thence westerly by the rear line until it meets lands deeded to George Reynolds by the said George Reynolds' land until it strikes the meadow; from thence to the place of beginning. Also, the western half of the meadow lot adjoining the uplands, or homestead, aforesaid, and for the withholding of which he claimed \$200 damages. 450

Issued this 6th day of December, A. D., 1877.

M. I. WILKINS, *Prothonotary.* 460

FRED. J. TREMAINE, *Plaintiff's Attorney.*

**NOTICE OF TRIAL.**

REYNOLDS vs. REYNOLDS.

**Notice to Appear and Defend Possession.**

SHERIFF'S RETURN.

I served a copy of this Writ on the within named defendant on the 5th day of December, 1877. 470

Fees \$6.00.

JOS. BELL.

