

*Held*, that the Master properly treated defendants as joint tort-feasors, and was not obliged to give reasons for his report, provided he sufficiently followed the directions in the decree; and that he was not obliged to sever the damages, either to show the liability to each defendant or the amount due plaintiff under each head of damage claimed.

*Held*, further, that the Master was the final judge as to the credibility of the witnesses, and his report should not be sent back because some irrelevant evidence may have been admitted of a character not likely to have affected his judgment, especially as no appeal was taken from his ruling on the evidence.

*Held*, also, that this court should not go behind the formal judgment of the court appealed from, which stated that the appeal was dismissed. Moreover, the position was the same as if the judges of the Court of Appeal had been equally divided in opinion, in which case the appeal would have been properly dismissed.

Appeal dismissed with costs.

*Gormully*, C.C., for appellants.

*O'Gara*, Q.C., for respondent.

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Nova Scotia.]

NOVA SCOTIA R.W. CO. v. HALIFAX BANKING CO.

*Mortgage—Railway bonds—Security for advances—Second mortgage—Purchase by—Trust.*

W. having agreed to advance money to a railway company for completion of its road, an agreement was executed by which, after a recital that W. had so agreed and that a bank had undertaken to discount W.'s notes (endorsed by E. to enable W. to procure the money to be advanced), the railway company appointed said bank its attorney irrevocable, in case the company should fail to repay the advances as agreed, to receive the bonds of the company (on which W. held security) from a trust company, with which they were deposited, and sell the same to the best advantage, applying the proceeds as set out in the agreement.

The railway company did not repay W. as agreed and the bank obtained the bonds from the trust company, and having threatened to sell the same the company, by its manager, wrote to E. and W. a letter requesting that the sale be not carried out, but that the bank should substitute E. and W. as the attorney irrevocable of the company for such sale, under a provision in the aforesaid agreement, and if that were done the company agreed that E. and W. should have the sole and absolute right to sell the bonds for the price, and in the manner they should deem best in the interest of all concerned, and apply the proceeds in a specified manner, and also agreed to do certain other things to further secure the payment of monies advanced. E. and W. agreed to this, and extended the time for payment of their claims and made further advances, and, as the last-mentioned agreement authorized, they re-hypothecated the bonds to the bank on certain terms.