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CARTWRIGHT, MASTER.

DECEMBER 24TH, 1906.

CHAMBERS.

BANK OF NOVA SCOTIA v. FERGUSON.

*Default Judgment—Motion to Set aside—Defence—Merits—
Leave to Defend—Terms—Judgment Standing as Security
—Costs.*

Motion by defendant Ferguson to set aside a default judgment entered by plaintiffs.

M. R. Gooderham, for defendant Ferguson.

C. A. Masten, for plaintiffs.

THE MASTER:—Ferguson and Dickson are sued on a demand note for \$5,000 and a guarantee of the account of a company of which they were treasurer and president respectively.

The company is in liquidation, but no dividend has yet been issued. Dickson entered an appearance, but, through some mistake, this was not done on behalf of Ferguson.

Both defendants have made affidavits setting up the defence which the defendants were allowed to make in *Dominion Bank v. Crump*, 3 O. W. R. 58. Both of them have been cross-examined, but are not shaken in their statements of the agreement made with plaintiffs' manager when the documents in question were given, when they were all present together. The joint presence of both defendants makes this case in that respect similar to the ruling case of *Jacobs v. Booth's Distillery Co.*, 85 L. T. 262, 5 O. W. R. 49.