

NOVA SCOTIA.

SUPREME COURT.

FULL COURT.

APRIL 29TH, 1911.

DENSMORE v. HILL.

Sale of Goods—Cross Accounts—Settlement—Over-due Acceptance—Judgment for Amount by Default—Action by Judgment-debtor for Alleged Balance Due Him by Judgment-creditor — Verdict Against Weight of Evidence—New Trial.

Motion to set aside verdict for plaintiff.

Mellish K.C., and Ferguson, in support of motion.

Sangster, contra.

RUSSELL, J.:—The case is that the plaintiff had a claim against the defendant for logs, to be paid for according to the quantity of deals of specified sizes that were turned out, and defendant sold slag to the plaintiff on account of which he drew on the plaintiff and plaintiff signed acceptance. These transactions took place in 1906. The defendant's account of the matter is that he drew for part of the amount due for the slag in October, 1906, and the plaintiff accepted the draft, which was renewed for the full amount with the added discount several times until February, 1908, when the full amount payable for the slag was assumed by the plaintiff—the previous acceptances having been made for only so much of the slag as plaintiff had disposed of—and a new note or acceptance was made for \$210 35. When this came due or was overdue a settlement of the cross accounts was made, and defendant having previously made cash payments, amounting to \$505, and sold a house to the plaintiff for \$85, the balance due plaintiff on lumber account was adjusted at \$109.40, and deducted from the amount of the current or overdue acceptance of \$210 35, when a new note or acceptance was made for the balance of \$10.95, which after being renewed several times from April 21st, 1908, to December 14th, 1908, became due on January 15th, 1909, for \$105.30, and was unpaid. It is undisputed that defendant soon after the date last mentioned sued plaintiff on this acceptance, that the case was undefended, that no set off on the lumber account was pleaded and plaintiff suf-