

were made, held himself out to the payees as a member of the firm of M., I. & Co. (the makers), he was liable as a maker, though he might not, as a matter of fact, have been a partner at the time.

Appeal dismissed with costs.

*McCarthy*, Q.C., and *Code*, for the appellant.

*Aylesworth*, Q.C., and *Cameron*, for the respondents.

Nova Scotia.]

[Feb. 18.

CLARK v. PHINNEY.

*Executors—License to sell real estate—Petition to revoke—Judgment on—Res judicata—Estoppel.*

Judgment creditors of devisees under a will presented a petition to the Probate Court to revoke a license granted to the executor to sell the real estate of the testator for payment of his debts. The petition was refused by the Probate Court, and the judgment refusing it affirmed by the Supreme Court of Nova Scotia. The executor sold the land under the license, and a part of the purchase money was paid to the judgment creditors, who, still claiming the license to be null, issued execution against the lands so sold, and the purchaser from the executor brought an action to establish the title thereto.

*Held*, affirming the decision of the Supreme Court of N.S. (27 N.S. Rep. 384) that in this action the judgment creditors could not attack the license on grounds which were, or might have been taken on the petition to revoke, and the judgment on said petition was *res judicata* against them.

*Held*, further, that the creditors by accepting a portion of the purchase money on the sale, knowing the source from which it came, had elected to treat the license as valid, and were estopped from attacking it in this proceeding.

Appeal dismissed with costs.

*Roscoe*, for the appellants.

*J. J. Ritchie*, Q.C., for the respondent.

Nova Scotia.]

[Feb. 18.

NOVA SCOTIA MARINE INS. CO. v. CHURCHILL.

*Marine insurance—Repair of ship—Constructive total loss—Notice of abandonment—Sale by master—Necessity for sale.*

The schooner "Knight Templar," insured by a time policy, sailed from Turk's Island, W. I., bound for Nova Scotia. Having sprung a leak she put back to Turk's Island and was beached. A survey was held and the surveyors recommended that the cargo be taken out to get at the leak. Two days later another survey resulted in finding her leaking three inches per hour, and two days after again she was making six inches, and the master was advised, if she could not be hove out, to put in ballast and take her to a port for repairs. She was then taken round to an anchorage where she remained some weeks, and after being surveyed again, was stripped, beached and sold at auction. The owners first heard of her having been disabled after the sale, and they sent to the underwriters a full account of the whole proceedings.