Held, that the judgment in this respect should be affirmed.

Osler, Q.C., for the appellants.

Blake, Q.C., and *Folinsbee*, for the respondent.

Nova Scotia.]

MOTT v. BANK OF NOVA SCOTIA.

Insolvent bank—Winding-up proceedings—45 Vict. cap. 23—47 Vict. cap. 39—Bank already insolvent placed in liquidation—Proceedings under what statute.

The Bank of Liverpool was placed in insolvency in 1879 under the Insolvent Act of 1875, and the Bank of Nova Scotia appointed assignee. In 1884 the assignee applied to have the insolvent bank placed in liquidation under 45 Vict. cap. 23, and 47 Vict. cap. 39. The Chief Justice of Nova Scotia granted the petition and appointed the Bank of Nova Scotia liquidator, holding that sections 2 and 3 of the Act of 1884 applied to banks. The Supreme Court of Nova Scotia affirmed this order. On appeal to the Supreme Court of Canada,

Held, STRONG and GWYNNE, JJ., dissenting, that these sections do not apply to banks, but an insolvent bank must be wound up with the same formalities as in the case of a bank not insolvent according to sections 99 to 102 inclusive of the Act of 1884, and three liquidators must be appointed in the manner therein provided.

Henry, Q.C., for the appellant.

Sedgewick, Q.C., and *Borden*, for the appellants.

British Columbia.]

SEA v. MCLEAN.

Sale of land—Sale by executors—Powers under will — Advertisement — Description — Words "more or less"—Breach of trust.

By the terms of the testator's will executors were empowered to sell so much of the real estate as might be necessary to pay off a mortgage thereon, and any other debts that the personal estate was insufficient to discharge. The executors offered for sale land described in the advertisement as "some sixty acres (more or less), Victoria District." The advertisement stated that the property to be sold adjoined M. Rowland's land, and had a frontage on the Burnside Road and on the road known as "Carey's Road."

At the sale a plan was annexed to the advertisement showing a lot coloured pink bounded by the above named roads. The auctioneer stated that the quantity was not known but would have to be determined by a survey to be made at the joint expense of vendor and purchaser. The land was offered for sale by the acre and knocked down to one S. at $36 per acre.

After the sale a survey was made and the land was found to contain 117 acres. S. claimed the whole quantity and tendered the price and a deed for signature to the executors. They claimed, however, that they only intended to sell sixty acres measured on the side adjoining Rowland's land, and to sell more would be a breach of trust on their part, as they only wanted some $2,000 to pay the mortgage and debts of the estate. S. brought a suit for specific performance.

Held (reversing the judgment of the Supreme Court of British Columbia). GWYNNE, J., dissenting, that S. was entitled to 117 acres.

Robinson, Q.C., and *Eberts*, for the appellant.

Ontario.]

BURGESS v. CONWAY.

Sale of land—Consideration in deed—Evidence—Sale of land or of equity of redemption.

B. sold to C. a lot of land, mortgaged to a loan society, claiming that it was a sale of the land for $1,400. C. claimed that it was merely a sale of the equity of redemption for $104.50, which B. had accepted as the amount due him according to the representation of C. who had figured it out, B. being incapable of figuring it himself. In the deed executed by B. the consideration was declared to be $1,400. C. paid off the mortgage for $1,081. In an action to recover the difference,

Held, TASCHEREAU and GWYNNE, JJ., dissenting, that the deed itself would be sufficient evidence of a sale of the land for $1,400 in the absence of proof of fraud or mistake, and B. was entitled to recover the difference between