

18 Feb., 1896.

Nova Scotia.]

## N. S. MARINE INSURANCE 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 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 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.

In an action for the insurance tried with a special jury all the findings were in favour of the assured, one of them being that the schooner could have been repaired if cost were not considered, but that it would cost much more than she was worth. A verdict was given against the underwriters.

*Held*, affirming the judgment of the Supreme Court of Nova Scotia, that if the vessel could have been repaired, even at a cost far exceeding her value, there was not even a constructive total loss, unless notice of abandonment was given, but

*Held*, further, that as it appeared that instructions could not be received from the owners inside of four weeks, the expense of keeping the schooner safely, the danger of her being driven ashore, and the probability that she would greatly deteriorate in value during the delay, justified the master in selling on his own responsibility, and the sale excused the giving of notice.

Appeal dismissed with costs.

*Macdonald*, for the appellant.

*Ritchie*, for the respondent.