

1905

CARSTENS ET AL. V. MUGGAH.

*May 5.

*May 15.

Evidence—Admissibility—Harmless error—New trial.

APPEAL from a judgment of the Supreme Court of Nova Scotia (1) setting aside a verdict at the trial in favour of the plaintiffs and ordering a new trial.

The action was for the price of goods sold and delivered, and the defence that the goods were received by defendant as plaintiffs' manager and not otherwise. The ground on which the new trial was ordered was that plaintiffs' books of account were improperly received in evidence against the defendant.

The Supreme Court of Canada reversed the judgment appealed from and restored the verdict at the trial holding that the books were received on the taking of evidence under commission by the express consent of both parties, and their reception could not afterwards be objected to on the general ground that they were irrevelant and immaterial to the issue.

Appeal allowed with costs.

Newcombe K.C. and *W. F. O'Connor*, for the appellants.

J. J. Ritchie K.C., for the respondent.

*PRESENT:—Sir Elzéar Taschereau C.J. and Girouard, Davies, Nesbitt and Idington JJ.