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DUFF v. LANE.

*Oct. 24.

*Dec. 22.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Solicitor and client—Retainer—Subsequent proceedings—Habeas corpus—Evidence.

APPEAL from a decision of the Supreme Court of Nova Scotia(1), affirming, by an equal division, the verdict at the trial in favour of the plaintiff (respondent).

Captain Walters, master and managing owner of the schooner Mary A. Duff, retained the plaintiff, a barrister, in the prosecution of some sailors for desertion. The sailors were convicted and imprisoned and plaintiff was also retained to oppose their application for discharge on *habeas corpus* which he did successfully. The captain being about to sail gave his note to plaintiff for the amount of his charges. About the same time he was removed from the position of managing owner and the defendant appointed in his stead. Plaintiff's note was presented to the defendant and paid.

The convicted sailors made a second application for a writ of *habeas corpus* and the order was served at the residence of Captain Walters. His daughter brought it to plaintiff, who telephoned to defendant concerning it and was told that he, defendant, had no instructions in the matter. Plaintiff attended on

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

the second application for the writ and defendant refusing to pay his bill he brought action.

The trial judge and two judges of the full court held that defendant's action in paying the former account and making no objection to his acting on the second occasion estopped him from denying the plaintiff's retainer.

The Supreme Court of Canada unanimously reversed the judgment for the plaintiff, holding that his retainer was at an end when Captain Walters settled his account.

Appeal allowed with costs.

W. F. O'Connor K.C. for the appellant.

Newcombe K.C. for the respondent.

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