case of any debt of a commercial nature, alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise."

There can be no doubt that this is an action of account; it is also, I fancy, an action on the case; but it is contended that it is not on a contract without specialty. "Specialty" is a technicality foreign to our law. We have not the division of contracts into parol and special contracts as I understand it to exist in the English law. We have therefore to interpret the meaning of this word as applied to our contracts, which are seldom under seal; and in doing this, we cannot come to any conclusion other than this: that a contract before notary is equivalent to an English contract under seal. It is our most solemn act.

The next question that arises is whether all the transactions with regard to this ship fall within the covenants of this deed. It seems to me that the answer to this question must be in favor of the respondent. It is perfectly evident that the deed contemplated further advances than those made before the sailing of the vessel, and that the deed was to apply to them. If this position be correct, Symes & Co. bound themselves to keep the vessel insured for all their advances. Now the contention of this Respondent is that the advances were not so covered at the time of the loss of the vessel, and that, therefore, he was not only relieved of any indebtedness to Symes & Co. for a balance, but that as Symes & Co. had received for him more than the insurance, the Appellants were liable to reimburse him what he had lost by this neglect of Symes & Co. In other words that Symes & Co. were paid off by the insurance.

To this it is answered that the insurance really covered the advances at the time of the loss, that Appellants were not obliged to do more, except at the special demand of Gingras, who not only never made such a demand, but who knew all the time the amount of the insurance, was satisfied therewith, and that it was his interest not to put the insurance higher than was necessary for reasonable safety, as he had to pay the premium, and that no one contemplated the total loss of a new ship between Liverpool and Quebec. It was also contended that Symes & Co. could not be liable to insure the ship for a greater amount than its value, for which it was insured, and that in fact they could not insure it for more.

I cannot concur with appellants in all these pretensions. There is no evidence that respondent acquiesced in any alteration of the contract, and I do not think parol evidence is admissible to prove that he had consented to a lower insurance than that stipulated in the deed—that is, to the insurance of all advances. Nor do I think the respondent is obliged to enter into the question of whether Symes & Co. could have insured the ship for a greater amount. In addition to this, there is no evidence to establish that the ship could not have been insured for the full amount of Symes & Co.'s advances.

On the other hand, I cannot see how we are to hold the appellants bound to any other obligation than to keep the vessel insured for the advances due at the time of the loss. The question then is, what were Symes & Co.'s advances on the 25th of April, 1855, when the ship was last heard of? This is a mere question of accounts, and it has been so fully explained by the learned Chief Justice, that it is quite unnecessary to allude to the details further than to say that I entirely concur in the principle on which he has made the calculations and the result at which he has arrived. The only point of difference between the members of the Court was as to the application of the monies coming from the "Agamemnon" transactions. It is not denied that if applicable to the "Empress Eugenie" accounts, they were received prior to the loss. But, it is said, Symes & Co. charged them to the general account of Gingras. I am at a loss to see what effect that should have on the contract, which distinctly states that all money coming to Symes & Co. on account of Gingras should go to the extinction of the advances on account of the "Empress Eugenie." It was a mere matter of book-keeping for the information of the firm. Probably they had separate accounts for the "Agamemnon" and the "Alliance," and so forth; but although a man's books may be used against him as evidence of admissions in certain cases, parties are not liable for their books, but for their contracts. The evidence of Mr. Knight was violently attacked on the ground of interest, and bias, and it was also maintained that his evidence was inadmissible. We know nothing against Mr. Knight's integrity, he has no apparent interest, and there is nothing in his evidence to lead us to think it is open to suspicion. As to its admissibility, we have given no heed to it except in so far as it goes to show the state of the accounts. I know of no rule of law which says that evidence of this kind is illegal. It will be observed that the Court has not allowed any evidence to alter or affect in any way the deed, which has been interpreted throughout in the sense given it by respondent. The judgment turns on the application of the monies received. It is not unworthy of remark that in general principle there is no difference of opinion among the judges, and that Mr. Justice Casault seems to have treated "advances" exactly as we do, for he deducted the freight gained on the "Empress Eugenie" on her voyage from Quebec to Liverpool. I therefore fully concur in the opinion of the learned Chief Justice.