their executors, agents or assigns, to at least the full amount of the advances made by them in respect thereof, and to such further reasonable amount as the said Jean Elie Gingras may see fit, and that the premium of such insurance shall be deducted from and out of the monies arising from the said premises."

In fact the vessel was sent to Liverpool, consigned to Messrs. Holderness & Chilton. The price of wooden vessels had terribly diminished, owing to the termination of the Crimean war, and the "Empress Eugenie" could only be sold at a ruinous sacrifice for respondent. It was then suggested that if the ship were coppered and re-registered at Loyds, she would shortly sell for a remunerative price, and that in the meantime she could be employed so as to produce a revenue. These operations were carried out at a cost of $41,004.88, and no question is raised that this was done with the approbation of the respondent; in fact it seems to have been done entirely in his interest, for appellants were fully covered by the securities they had in hand, by freight, and other collections, and by the vessel, which they were entitled to sell at the then low price. The vessel then started on a voyage to Quebec, and she was lost at sea. The whole amount of the indebtedness to G. B. Symes & Co. was for advances, $115,003.88 and with interest and commissions (amounting to $23,060) $138,063.88, and the vessel was only insured for the sum of $68,800.00
and the freight for..... 7,600.00

$76,483.36

When the vessel left Quebec she was insured for $93,683.36.

The first plea to this action is one of prescription. It is said it was either prescribed as a commercial case by five years, or as an action on the case by six years.

This question gives rise to an involved narrative. The present action bears date the 5th July, and was served on the 14th July, 1876, 21 years after the loss of the ship in question. It seems, however, that so far back as the 15th December, 1857, Symes & Co. had sued respondent for the sum of £2,929 4s., being the balance they claimed to be due them for all their intromissions with regard to the "Empress Eugenie." That to this action, Gingras pleaded an exception of set-off, based on the default of Symes & Co. to insure. They made no incidental demand. This action proceeded very slowly; Symes died in 1863, and his partner, Young, in 1869, and on the 1st February, 1873, the suit being still pending, the Court House at Quebec was destroyed by fire, and the record in the case of Symes et al., and Gingras, was utterly lost. The legislature of the Province of Quebec then passed an Act to remedy, so far as was possible, the injury done to suitors by this accident. By this Statute they gave means to restore a record under certain circumstances, and if that be impossible, a judge of the Superior Court is authorized "to permit such party to commence such case or proceeding, or to bring an action for the same cause as that set forth in the case or proceeding of the said applicant." (37 Vic., cap. 15, s. 7, Q.)

At the argument, appellant's counsel objected to the judge's order, and seemed to invite us to reverse it. He says that this is not a renewal of any proceeding or the recommencement of any proceeding, but an entirely new action, and that the judge had no power to grant such an order. We have not the means to examine the exercise of the judge's discretion in this matter, for no exception has been taken to the preliminary order, and we know nothing of the merits of the application but what respondent has told us in his declaration. We, however, do know by the admissions of the declaration, that the procedure of respondent was a compensation of the claim of Symes & Co. to the amount of that claim. It might however have been necessary to examine the appellant's claim for all that exceeds the amount pleaded by way of set-off (Sec. 21), that is to say for all the demand beyond £2,929 4s. But from the view we take of the plea of prescription, this distinction becomes unimportant.

The learned judge in the Court below dismissed the plea in so far as it regards the prescription of five years, on the ground that it was introduced by the civil code (2260 s. 4.), and therefore as the prescription in this case began to run before the promulgation of the code, the old prescriptions apply (2270). He also dismissed the part of the plea of prescription, invoking the limitation of 6 years, and we are unanimously of opinion that the learned judge was right in dismissing the plea setting up both of these limitations. With regard to the latter, the prescription of six years was introduced by the 10 and 11 Vic., c. 11, and continued by cap. 67, C. S. L. C. Sec. 1 is in these words, "no action of account or upon the case, nor any action grounded upon any lending or contract without specialty, shall be maintainable in or with regard to any commercial matter, unless such action is commenced within six years next after the cause of such action." And section 5 enacts that "This act shall apply to the