no adjudication as to the ownership in the order of reference but the rights of the navigation company and the insolvent company (and its liquidator) are presumed the navigation company is allowed to take possession of the ship and materials, but that is all. The reference is to determine the amount of lien, if any, and any damages the liquidator may suffer by reason of the navigation company taking possession of the said material—in other words if there be a lien, how much is it? and if there be ownership, what damages for taking the property from the possession of the owner?

By the agreement the shipbuilding company was to build a freight steamer for the navigation company by October 1st, 1907, for $297,000, payments to be made every two months to the extent of 80 per cent. of the work done and material purchased by and delivered to the contractor for constructing the steamer—balance on completion—the shipbuilding company to provide all manner of labour, material and apparatus. As work goes on after the first payment "the property in the said steamer so far as constructed, and in all machinery belonging thereto and in all materials purchased and intended to be used for constructing the same or any part thereof, shall become vested in and be the absolute property of the owner (i.e.) the navigation company, and the contractor (i.e. the shipbuilding company), shall and will then or at any time thereafter at the request of the owner execute and deliver to the owner such bill of sale or other assurance as the owner may be advised to be necessary to so vest said steamer and machinery and material in the owner, subject to the lien of the contractor upon the said steamer and its machinery and equipment for any unpaid balance . . . and subject to the possession of the said steamer remaining in and with the contractor until the owner is entitled to delivery in accordance with the provisions of this contract."

This provision operated in equity as a transfer of ownership from the time of the first payment, of all the ship and materials, etc., without the execution of a bill of sale. There is I presume no difficulty as to that part of the ship and materials in hand *in esse* at the time of this payment, and I think there can be no doubt as to the rest.

In *Holyroyd* v. *Marshall* (1861), 10 H. L. C. 191; 9 Jur. N. S. 213, T. owned certain machinery in a mill sold it to H., remaining in possession. Desiring to repurchase it he executed a deed declaring that it was the property of H.,