

or such as was pointed out by the statute, appears to have been taken to have the resolution set aside as illegal. In the Act of 1879, paragraphs 2, 3, 4 and 5 of section 185 of the Act of 1874 were preserved. Now those paragraphs refer particularly to the proceedings of the commissioners in respect to the public notices they were required to give, and of any objections that might be made by those interested, and paragraph 5 makes this special roll final.

My opinion, therefore, on this case, as it presents itself to me, is to dismiss the Petition with costs.

Petition dismissed.

Barnard & Co., for petitioner.

R. Roy, Q.C., for the defendant.

SYMES ET AL. & GINGRAS.

Judgment in the above case was rendered at Quebec, during the February Term, reversing the judgment of the Superior Court. Mr. Justice Tessier dissented. The opinion of Ramsay, J., for the majority of the Court, was as follows :—

RAMSAY, J. This action was brought to demand from appellants a specific sum of money, namely \$48,341 and interest from the 20th May, 1857, on a deed passed on the 18th August, 1854, between the firm of G. B. Symes and Company, then represented by the late George Burn Symes and the late David Douglas Young, and the Respondent.

The parties do not entirely agree as to the nature of this deed. In form it is a sale in trust by respondent to the appellants, of a ship as security for advances made and to be made to the builder and owner, the respondent. This form is borrowed from the English law and is extensively used in commercial transactions here, although it is totally foreign to our legal system. But the form of the deed in reality is of no importance, in considering this case, for our law takes no notice of the names people give their acts, but proceeds at once to examine what has really been done, and subjects the stipulations of the deed to the rules governing the class of contracts to which the deed properly belongs. Thus such a contract as that before us is not considered between the

parties as a fictitious sale, but as an irrevocable *mandat* to Symes & Co., to act in the joint interests of the parties.

Without entering into all the details of the deed, it is only necessary to say that G. B. Symes & Co. were to receive the vessel, and to sell her or any part of the property, when and where they deemed best, and for the best price they could get, and out of the money derived from such sale, or from the earnings by freight or hire, or from money "otherwise coming to their hands on account of" respondent they were to repay themselves and give the balance to respondent. But these stipulations were limited by other covenants in the deed, and it was "further covenanted and agreed, by and between the said parties, that the said vessel shall go to Liverpool, consigned to Messrs. Holderness and Chilton, merchants of that place, or to any other person or persons the said George Burns Symes & Co., their executors, administrators or assigns may see fit to address the same, who shall sell the said vessel as aforesaid," etc. From other words of the deed, we learn that that G. B. Symes & Co. were not bound to sell the ship in Liverpool, but that they might cause her to proceed to London "for the purpose of effecting a sale of the said vessel, and where the said vessel shall be sold, according to the powers in that respect hereby granted, after the arrival of the same on her then first voyage, to the end that all advances of money made under these presents be repaid, with all incidental costs and charges."

The appellants insist that the sale must be "on her then first voyage," but the deed goes on to contemplate a hiring of the ship by G. B. Symes & Co. for other voyages, and there is a provision how the freights and earnings of the vessel shall be dealt with.

These dispositions are rather contradictory, but the contradictions do not give rise to any difficulty in dealing with the case before us. The main question submitted to us arises on the stipulation contained on the 12th page of the deed, respondent's exhibit No. 1. It is in these words: "And it is hereby further agreed and declared by and between the said parties, that the aforesaid vessel and her freight shall at all times be kept insured by the said George Burns Symes and Company,