

what would be fair between them—I cannot say—but all this would fall short of the contract which the plaintiff to succeed must establish.

In the view I take of the evidence the action must be dismissed, but under the circumstances it will be without costs.

Thirty days' stay.

HON. MR. JUSTICE RIDDELL.

JUNE 22ND, 1912.

RE CANADIAN SHIPBUILDING CO.

3 O. W. N. 1476; O. L. R.

Company—Winding-up—Liquidator—Claim of Ownership of Ship in Course of Building—Bill of Sale—R. S. O. (1897), c. 148.

In the course of liquidation of the Canadian Shipbuilding Co., Ltd., the Hamilton & Fort William Navigation Co., Ltd., claimed possession of a partly finished steamer being built for them by the Shipbuilding Co. under a contract and in respect of which two bills of sale had been given them as the work progressed. The liquidator disputed their claim, taking the position that the bills of sale were invalid as against him. Under the contract for the construction of the steamer, payment up to 80% of the cost of construction was to be made by the purchasers every two months, and after the first payment, ownership in the partially completed steamer and all materials, etc., used in the construction, was to pass, from time to time, to the purchasers, the Shipbuilding Co. covenanting to execute and deliver to the purchasers such bills of sale or other assurances as were necessary to vest title in them.

RIDDELL, J., *held*, that, under the contract, the ownership in the unfurnished steamer passed in equity to the purchasers after the making of the first payment.

Holroyd v. Marshall, 10 H. L. C. 191; 9 Jur. N. S. 213, followed.

That a liquidator, not being a creditor nor a purchaser for valuable consideration, cannot invoke the Bills of Sale Act, R. S. O. (1897), c. 148.

Dictum of STREET, J., in *In re Canadian Camera Co.*, 2 O. L. R. 677, disapproved.

Judgment of Referee confirmed, and appeal therefrom dismissed with costs.

An appeal by the liquidator of the Canadian Shipbuilding Co. from a certificate of an Official Referee.

J. A. Paterson, K.C., for the liquidator's appeal.

H. E. Rose, K.C., for the Navigation Co., contra.

HON. MR. JUSTICE RIDDELL:—The Canadian Shipbuilding Company made a contract, February 18th, 1907, to build a steamer for the Hamilton and Fort William Navigation Co. Limited, for \$297,000—they were paid \$30,000 on ac-