NOTES OF CASES.

MONTREAL, March 31, 1880.

CANADA SHIPPING CO. v. V. HUDON COTTON CO.

Action by principal on contract made by agent in his own name without disclosing his agency.

MACKAY, J. The defendants bought a cargo of coal from Thompson, Murray & Co. The defendants weighed all the coal as it was delivered, and found the quantity considerably under that stated in the broker's note. They declined to pay for more than the weight as they found it, and then the present action was instituted. But the plaintiffs in the suit were not Thompson, Murray & Co., but the Canada Shipping Company, who sued as if the transaction had been theirs. The suit was the first intimation that the Hudon Cotton Company had that the Canada Shipping Company had anything to do with the coal. The action was met by a first plea, that the defendants never had anything to do with the Canada Shipping Company; that they contracted only with Thompson, Murray & Co. His Honor was of opinion that this plea must prevail. English authorities had been cited to show that in England the principal may adopt the contract, as had been done here. But when the writers on the French law were referred to (and this was the law that governed the present case), it appeared that our jurisprudence was different. The action should be brought on the contract. Here there was no intimation in the broker's note, or in the bill of parcels, that the Canada Shipping Company had anything to do with the transaction. Troplong, Mandat, Nos. 519-523, was cited by his Honor. The action must be dismissed.

The judgment is as follows:—

"The Court, etc..

"Considering that plaintiffs have failed to prove liability of defendants' Company towards them, as alleged;

"Considering that the sale of coals in this cause was by Thompson, Murray & Co. to defendants, and that the broker's notes, and also letter of 13th August, 1879, show that; considering that from them the defendants could not discover the plaintiffs as the vendors;

"Considering that Thompson, Murray & Co. sold the coals referred to to the defendants' Company; that Thompson, Murray & Co. kept silence as to the existence of quality of mere agents in them, acted in their firm particular name, and did not take quality of agents in or at the contract of sale; that Thompson, Murray & Co. ought, under the circumstances, to be held for all the purposes of this case or suit, the veritable sellers (*vide* No. 522, Troplong, Mandat), and so the defendants' first plea must be maintained;

"Considering that in and at that sale of coals, Thompson, Murray & Co. did not engage *pour autrui*, nor did defendants promise towards any *commettant*, but only towards Thompson, Murray & Co.;

"Doth dismiss plaintiffs' action with costs."

Davidson, Monk & Cross for plaintiffs.

Brique, Choquet & McGoun for defendants.

SUPERIOR COURT.

MONTREAL, May 21, 1880.

DUNKERLY v. LORD et al.

Charter-party—Loading "with all dispatch"—Delay caused by vessel having to wait for her turn to load.

The demand of plaintiff was for fifteen days' demurrage at £50 stg. per day. The defendants chartered the steamer Tagus on the 27th May, 1873, to take a cargo of coal from Sydney, Cape Breton, to Montreal, and the charterers undertook that the vessel was to be loaded with all dispatch at Sydney.

The defendants pleaded that the vessel was to be loaded according to the custom of the port, and of the mines of Sydney, namely, in her due turn, with other vessels there loading coal; that on the arrival of said vessel at Sydney, the master was informed that three weeks would elapse before the Tagus would be entitled to her turn, which was on 4th July, and she was then loaded with all dispatch.

TORRANCE, J. Looking carefully at the charter-party, the Court sees nothing to qualify the undertaking by the charterers that the vessel was to be loaded with all dispatch at Sydney. The custom of the port, and the crowd of vessels which might have been before the Tagus and entitled to precedence, did not modify the undertaking for dispatch. The authorities of plaintiff *Ashcroft et al.* v. *The Crow Orchard Colliery Company*, 9 Q. B. Law R. 540, (1874) and *Randall* v. *Lynch*, 2 Camp. R. 355, appear to support this pretension which is only reasonable. If the charterers made an improvident contract they could only blame themselves.

Judgment for $3,650, equal to £750 sterling.

A. H. Lunn for plaintiff.

W. H. Kerr, Q.C.
C. C. Carter } for defendants.