tificates all books, magazines, periodicals, and other printed matter, on the terms mentioned in the certificates.

R. McKay, for the appellants, contended that they were entitled to rank as creditors against the estate of the company for substantial damages as established by the evidence, and that the liquidator should pay the costs.

C. D. Scott, for the liquidator, contra.

Falconbridge, C.J.—The referee was right in disallowing the claim of Connery, not perhaps because Connery committed a breach of the contract entitling the syndicate to put an end thereto, but because the selling of books at a profit was not contemplated by the contracts, and therefore loss of prospective profits, besides being obnoxious to the general rule, was never in contemplation of the parties. His general statement that he bought a great many books besides, does not afford any reasonable basis for a specific finding of damage.

But as to Greig and Parke, the learned referee has confounded loss of prospective profits or speculative damage with the loss which these two claimants will sustain by reason of not being able for three years to buy a certain quantity of books for their own use at a certain promised discount; i.e., at a price less than they can buy them for in the open market.

Parke's damages assessed at $30; Greig's damages at $20. No costs of appeal as to Connery's claim. Parke and Greig to rank for $30 and $20 respectively, with $20 each costs allowed by the referee, and costs of this appeal fixed at $10 each.

November 10th, 1902.

DIVISIONAL COURT.

BENTLEY v. MURPHY.

Ship—Contract to Sell — Co-owners — Partnership—Authority of One Co-owner to Bind the Other—Ratification—Specific Performance —Damages.

Appeal by plaintiffs and cross-appeal by defendant Craig from judgment of Britton, J., at the trial (1 O. W. R. 273). The action was to compel specific performance of an alleged agreement by defendants to sell and deliver to plaintiffs a steamer called the "Island Queen," then at Kingston, for $5,000, payable $2,500 on delivery and $2,500 six months from the date of delivery.

The trial Judge found that the contract was made by Murphy on behalf of himself and Craig; that Murphy and Craig were not only part owners of the steamer, each being entitled to 32 shares, but were partners in the venture; that Craig, as between himself and Murphy, insisted on getting