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HODGE v. *THE QUEEN—OPINION IN ENGLAND.*

The *Law Journal* (London), in its issue of March 29, refers to the judgment of the Judicial Committee in this case, which was criticized by "R." (7 L. N. 49), and appears to entertain the same doubts as to the correctness of the opinion expressed by their lordships on the question of "imprisonment" including imprisonment with hard labour. The observations of the *Law Journal* are as follows:—

"Criticisms on the decisions of a Court of final appeal are mainly of value for the purpose of bringing home to the appeal judges the remembrance of the fact that they are subject to criticism. We confess that the observations made in Canada on a part of the decision in *Hodge* v. *Reginam*, 53 Law J. Rep. P. C. 1 (to appear in the April number) are not without weight. It is held by the Judicial Committee of the Privy Council that under the words 'punishment by fine, penalty or imprisonment' in section 92 of the British North America Act, 1867 (30 Vict. c. 3), the provincial legislatures of the Dominion of Canada have power to impose imprisonment with hard labour. By a well-known rule of construction, the word 'penalty' cannot include a particular form of imprisonment, because imprisonment is expressly mentioned. The word 'imprisonment,' therefore, is held to include imprisonment with hard labour; does it also include imprisonment with solitary confinement? The learned lords say that hard labour is generally incident to imprisonment; but ought it to be assumed that an Act of Parliament which creates a constitution and begins upon a *tabula rasa*, intends one form of punishment to be included in another because they are often in other laws and other constitutions associated together? The judgment was delivered by Sir Barnes Peacock, and so has perhaps the weight of his high authority. How many of the lords differed from the opinion given to the Crown it is impossible to say. From the peculiar practice of the Judicial Committee in giving judgment, the weight of their decisions on professional opinion is dissipated. To give to the world a decision of the majority of five lawyers is to give a decision which has the authority of not even one of them."

LIBERTY OF THE PRESS ABUSED.

The writer of an article in a recent issue of the *Manhattan* laments the degeneration of the great journals of New York within the past twelve or fifteen years. Newspapers give less attention than formerly to topics legislative, educational and scientific, and feed their readers on the unwholesome diet of sensationalism—divorces, the phases of illicit love, and similar scandals. This is not a healthy symptom of the times, and Mr. Smalley, the writer referred to, will have the sympathy of every right-thinking person in the protest which he makes against this abuse of a noble profession. Unfortunately, it is not confined to one city, nor to the American continent. The same spirit is prevalent in England, where journals mushroom-like are springing up and sustaining a feverish existence by the total disregard of the decencies of life. The columns of rubbish published lately about a breach of promise case, apparently because the defendant is the son of an ex-Lord Chancellor, afford one illustration. Another remarkable instance is the recent publication, in a journal like the *Pall Mall Gazette*, of the story that Lord Coleridge had made an offer of marriage to Miss Mary Anderson, the actress. Surely the editors of the *Pall Mall Gazette* were perfectly aware that this was a pure fabrication, without a semblance of plausibility to take it out of the mess of inane clatter which daily finds its way into print. Miss Anderson has publicly expressed her pain at the report, as well as her indignation that statements of this description should be disseminated without inquiry. Lord Coleridge also has deemed it to be his duty to meet the rumor by a flat contradiction, which he does in these terms, in a letter addressed to the editor of the *Pall Mall Gazette:*

"It would be affectation to doubt that the paragraph headed 'The Judge and the Actress' in your paper this evening refers to me. I desire, in the fewest possible words, to state that I never had the pleasure of seeing Miss Anderson in my life, either in public or private, and that I never wrote a line to her. The whole matter is an absolute and impudent falsification."

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1884.

Before JOHNSON, J.

RIVET v. THE CITY OF MONTREAL.

City of Montreal—Assessment for cost of improvement—Petition to annul special assessment roll.

Commissioners acting under the 42 & 43 Vict., c. 53, regulating proceedings for the preparation of special assessment rolls for improvements in the City of Montreal, are not authorized to go beyond the terms of the resolution of Council settling the proportion of cost to be levied on the proprietors benefited. And where an action was brought to annul a special assessment roll, without attacking the resolution under which it was prepared, the Court held that the question, whether the city had power to limit its share to one-third of the cost of the improvement, was not put in issue, and could not form the subject of inquiry.

JOHNSON, J. This is an action brought in the form of a Petition by a municipal elector to annul a special assessment roll made by commissioners acting in virtue of a resolution of the corporation, for the purpose of a local improvement, and under an appointment for that purpose made by the Court of Review.

The right to petition is based on sec. 12 of 42 & 43 Vic., c. 53, which is as follows:—"Any municipal elector, in his own name, may, by a petition presented to the Superior Court sitting in Montreal, demand and obtain, on the ground of illegality, the annulment of any by-law, resolution, assessment roll or apportionment, with costs against the corporation."

The 4th section of the same statute, after reciting certain previous and abortive assessments, authorized other and new assessment rolls to be made, and also the appointment by the Court of Review of three commissioners for that purpose; and by the fourth clause of that section it was enacted what the powers and duties of the commissioners should be, and certain other provisions of a previous statute, (37 V. c. 51) were referred to as governing their proceedings. As to their office, and the nature and extent of their duties as commissioners, the fourth section said: "It shall be the duty "of the said commissioners to commence their "proceedings on the day fixed by the judg- "ment appointing them, and to assess and "apportion the cost of the improvement in "whole or in part, as the case may be, "according to benefit and in such manner "as to them may appear most reasonable "and just, upon all and every the pieces "or parcels of land or real estate which "they may determine to have been bene- "fited." In May, 1880, the commissioners were appointed by the Court of Review; and that Court appears, by its judgment on that occasion, to have held that whatever difficulties might arise thereafter, when the commissioners should have terminated their proceedings, there was, at all events, no difficulty then in the way of appointing them. The difficulties or some of the difficulties which seem to have been then anticipated are now said to have arisen, and the assessment the commissioners have made is arraigned on a variety of grounds—some of which I will not dwell upon further than to say that they are of a most extensive and sweeping character, and directly include in one vast conspiracy both the legislature and the corporation, as well as their individual members. Coming down, however, to more tangible grounds of complaint, I understand the main pretension of the Petitioner to be that this last assessment roll made by the three commissioners appointed by the Court of Review should be set aside, because the commissioners have proceeded upon an entirely erroneous principle in assessing him at $1,015 for his share of this improvement, whereas he was not benefited to that extent; and that the duty of the commissioners was, under the interpre-

tation of the law advanced by the Petitioner, to have considered the benefit not only to the neighbouring properties, but to the citizens generally; and this view has been enforced with great energy and ability, as well by reference to the law itself, as by reference to the history of the law which is of the most complicated kind; and it was even said by the Petitioners' counsel that the locality of this improvement was very slightly, if at all, benefited, the matter being one which interested the whole city; and that if the commissioners had conceived that they had a real discretion to exercise they would have thrown two-thirds, or three-fourths of the cost upon the city itself, instead of proceeding upon the assumption that two-thirds were to be borne by the parties immediately interested in the neighbourhood of this particular improvement. Now the Court finds itself somewhat embarrassed in this case, which from first to last appears to be one of an extraordinary description. It must be remembered that it is not an action to set aside a by-law, nor yet to set aside a resolution; but only to set aside an assessment roll.

What, if there is no assessment roll produced? Yet assuredly there is none. It was said there were admissions: so there are; but hardly sufficient to cover this. There is no document, and there is no admission showing precisely and entirely what this assessment roll was; and there is nothing either to show exactly what was the resolution of the council, which was the authority for making this assessment. There is verbal and other evidence, no doubt, from which information on these points may be had to a certain extent; but as to this part of the case, the petition itself, even, is deficient and extremely general: it merely says:

"Que la dite cité de Montréal ayant fait "amender sa charte par le Parlement de la "province de Québec, a fait faire par trois "commissaires en expropriation, savoir par "MM. Hugh McLennan, G. Pallascio, et Joël "Leduc, tous trois de la cité de Montréal, un "nouveau rôle de cotisation pour repartir "sur les personnes que les dits commissaires "jugeraient être intéressées dans la dite amé"lioration les deux tiers du coût d'icelle, le"quel rôle est entré en force le 24 novembre "1881."

In the absence of the roll itself, this part of the petition sufficiently shows that what it required the commissioners to do was to apportion two-thirds of the cost among those benefited. There is no other proof whatever of what the scope of the resolution was, so that whether they acted within their powers, or beyond their powers cannot be determined by the terms of the resolution itself; but it seems to have been taken for granted that the resolution, and the judgment of the Court of Review gave powers in conformity with the law which is to be found in sub-section 4 of the 4th section of the Act of 1879, which I have already recited. Both parties seem to have acquiesced in this mode of proceeding; and the answer of the Corporation to this petition being merely general, a long *enquête* was had, and amongst other things the commissioners themselves were brought up as witnesses, and examined to explain their proceedings. I may say at once that I should be disposed to reject this testimony as inadmissible: but I will not go into that now, because the defendants who objected to it at the *enquête*, do not move to reject it now; and for the further reason that being before me, in the absence of motion to reject, I have read it; and I do not consider that it can affect the case, on the merits one way or the other. The law meant either that the commissioners were to do as they did, or it meant that they were to proceed otherwise, and in the sense contended for by the plaintiff. In the first case there would, of course, be an end of the matter: in the second, their reasons good or bad are of no consequence; it is with their conclusions that we are concerned; and if the law says that they are to do one thing, and they have disregarded it, and have done another thing, there would, of course, be "illegality" under the 12th section of the Act of 1879. So the whole case at the hearing was confined to discussing what were the powers of the Corporation with respect to such expropriations, and how they had been exercised in the present case.

Now, whatever may have been the precise terms of the authority or resolution of coun-

cil, so long as it is not itself attacked, (and I have already observed that the petition does not profess to ask that the resolution may be annulled as illegal), it would seem surely at first sight erroneous and illogical in the highest degree to say that the commissioners in acting under it, and within the limits it prescribed, while it is still in legal force and effect, have acted illegally,—that is as far as their own action is concerned, for the illegality if any, must, in that case, have been in the powers themselves, as well as in the execution of them; and not in the mere exercise of powers either admittedly legal, or what is the same thing practically, left to their legal effect without being called in question.

What the commissioners did appears, as far as it can be collected from the record, to have been this: after their appointment by the Court of Review they advertised in the newspapers, as they were required to do, that they "had been appointed commissioners to "assess two-thirds of the cost of the improve- "ment, and that they intended to levy the "assessment on a great number of proper- "ties which they proceeded to designate, "and within the limits which they de- "scribed; and then they gave notice to all "parties interested that they would meet at "their room in the City Hall, on Thursday, "the fifth of May next, at three o'clock in "the afternoon, and would then and there "hear any complaint against the proposed "limits of assessment." As far as appears no objections were made by any one, and the commissioners went to work to assess two-thirds of the cost, and within those limits, and their right to do so does not appear to have been at that time questioned. Therefore, though I have not the terms of the resolution before me, I see from such evidence as I have that the commissioners made it quite clear that they were going to act as they did, and that nobody was then found who objected to that course; and that it was the right course for them to pursue, if that was what they were required to do by the resolution, and by the judgment of the Court of Review, if neither of those sources of power were called in question in a legal manner. I must assume also that such really *was* the course required of them, because the petitioner, though he does not allege it in express terms, in his petition, does allege that that was the precise power which the Corporation assumed to exercise; and because also the learned counsel who argued his case with such consummate skill, distinctly put it upon that ground. He argued against the existence of such a power in the council, and against its exercise by any one acting under their orders, and he assumed that the council had ordered the thing to be done in that way; and I must say I was struck at the time by his argument which was this, (and I take it from his factum word for word), "To say that because the council, "when ordering the widening of the street, "had decided that the city should only pay "one-third of the cost, it followed that the "city only had been benefited to the extent "of one-third, would be to recognize the "right of the council to determine who the "parties benefited were, whereas the inten- "tion of the new law was that the commis- "sioners alone should be invested with that "power." Whatever may be the force of that argument which I will come to in a moment, it implies, I think, clearly that that is what the council did, and that they had not the power to do it. As to the argument itself, I must say it appears to me fallacious, because it confounds the power to determine who the parties to be benefited were with the power to fix the extent of the benefit; but it certainly appears to admit that the resolution must have limited the latter to two-thirds, as regards the locality, and one-third as regards the rest of the city. The position of the petitioner therefore must be that the council gave the commissioners this power whether it had it to give or not; and that the commissioners exercised the power within the limits given. But as regards the proceedings of the commissioners themselves, which is all that is attacked by this action, where can it be pretended that the "illegality" of their proceedings is to be found? Yet that is all that the petition asks to annul. On the other hand if it is an 'illegality' resulting from the execution of illegal orders, why are those orders, why is that authority itself, not the subject of the action?

The sec. 12 says any municipal elector may demand the annulment of any by-law, resolution, or assessment roll, etc. The resolution is let alone:—it remains and subsists in full force until annulled by this court which is not asked,—yet, what was done under it, though precisely what it ordered to be done, is said to be illegal. It seems to me that if you do not question the legality of the resolution, you can hardly question the execution of it, unless the execution be at variance with the terms of it—which is not contended. It must be obvious that, if the commissioners had assessed the city for a single dollar more than the one-third it had assumed, they would have exceeded their authority; yet, whether the city had power to limit their share to one-third is not put in question in this case. They are not here called to defend themselves against any charge of illegality in their own proceedings—that is, as far as their resolution is concerned. All that seems admitted virtually to have been legal enough; but when the commissioners come to exercise the powers given to them by the resolution and by the Court of Review, it is not the powers so given that are contested; it is only what they did under those still unquestioned powers. I am not called upon now therefore to consider the right of the Corporation to determine the extent of the benefit. That is not in question in this proceeding. I am asked merely to say there is "illegality" in the proceedings of the commissioners who acted under an authority, whether good or bad—that has not been proceeded against as the 12th section requires, within three months; for the 12th section not only gives the right to set aside a resolution by petitioning this court; but it says that the right to do so must be exercised within three months from the "date of the coming into force of "such resolution; and after such delay, "every such resolution, etc., shall be consi- "dered valid and binding for all legal pur- "poses whatsoever, provided it be within "the competence of the said Corporation." Upon first taking up this case I looked at it, of course, merely as it had been argued—as if it embraced the question of the illegality of the resolution, and as if I had to determine what were the powers of the Corporation as to widening streets. I confess I was not able to get much light on that question from a reference to the older statutes. I may say, however, that it appeared to me that the law had been greatly changed, and that the Acts of 1874 and 1879 had very materially altered the rights of the corporation in these respects. I formed no final opinion, and I give none, as to those powers, as that question is not before me. The commissioners of course had no authority to act at all except such as was given by the resolution and the terms of their appointment by the court. It may or may not be made to appear very clearly from all these charters, and amendments and consolidations of the statute law what these precise powers are; but one thing seems tolerably plain, that this resolution or authority of council which has been acted on by the Court of Review, and by the Commissioners, is in full force and effect, and cannot now be questioned, and therefore, that to say it was not within the competence of the corporation, while the course pointed out by law for testing that question has been neglected, and to ask me to deal with it incidentally in another manner is to ask me to assume a power which the law does not give. To defeat this assessment upon such grounds would be a course opposed to the object of these enactments which ought to be made to prevail where the improvement and advancement of the interests of the city are what is in view by the legislature. This resolution, though not here to speak for itself, must have been anterior to the judgment of the Court of Review, which is stated to have been in May, 1881. The proceedings of the Commissioners in giving notice, as before adverted to, came afterwards, and then finally the assessment itself which is said to have come into force in November, 1881. The resolution was being acted upon during all that time, in the Court of Review, and by the commissioners; yet no action was taken by any one to test the power of the corporation to pass such a resolution. There certainly appears by some printed slips of newspapers in the record to have been opposition made in the Court of Review to the appointment of Commissioners; but no step that could be effectual,

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,

their executors, agents or assigns, to at least the full amount of the advances made by them in respect thereof, and to such further reasonable amount as the said Jean Elie Gingras may see fit, and that the premium of such insurance shall be deducted from and out of the monies arising from the said premises."

In fact the vessel was sent to Liverpool, consigned to Messrs. Holderness & Chilton. The price of wooden vessels had terribly diminished, owing to the termination of the Crimean war, and the "Empress Eugenie" could only be sold at a ruinous sacrifice for respondent. It was then suggested that if the ship were coppered and re-registered at Loyds, she would shortly sell for a remunerative price, and that in the meantime she could be employed so as to produce a revenue. These operations were carried out at a cost of $41,004.88, and no question is raised that this was done with the approbation of the respondent; in fact it seems to have been done entirely in his interest, for appellants were fully covered by the securities they had in hand, by freight, and other collections, and by the vessel, which they were entitled to sell at the then low price. The vessel then started on a voyage to Quebec, and she was lost at sea. The whole amount of the indebtedness to G. B. Symes & Co. was for advances, $115,003.88 and with interest and commissions (amounting to $23,060) $138,063.88, and the vessel was only insured for the sum of $68,800.00
and the freight for..... 7,600.00

$76,483.36

When the vessel left Quebec she was insured for $93,683.36.

The first plea to this action is one of prescription. It is said it was either prescribed as a commercial case by five years, or as an action on the case by six years.

This question gives rise to an involved narrative. The present action bears date the 5th July, and was served on the 14th July, 1876, 21 years after the loss of the ship in question. It seems, however, that so far back as the 15th December, 1857, Symes & Co. had sued respondent for the sum of £2,929 4s., being the balance they claimed to be due them for all their intromissions with regard to the "Empress Eugenie." That to this action, Gingras pleaded an exception of set-off, based on the default of Symes & Co. to insure. They made no incidental demand. This action proceeded very slowly; Symes died in 1863, and his partner, Young, in 1869, and on the 1st February, 1873, the suit being still pending, the Court House at Quebec was destroyed by fire, and the record in the case of Symes et al., and Gingras, was utterly lost. The legislature of the Province of Quebec then passed an Act to remedy, so far as was possible, the injury done to suitors by this accident. By this Statute they gave means to restore a record under certain circumstances, and if that be impossible, a judge of the Superior Court is authorized "to permit such party to commence such case or proceeding, or to bring an action for the same cause as that set forth in the case or proceeding of the said applicant." (37 Vic., cap. 15, s. 7, Q.)

At the argument, appellant's counsel objected to the judge's order, and seemed to invite us to reverse it. He says that this is not a renewal of any proceeding or the recommencement of any proceeding, but an entirely new action, and that the judge had no power to grant such an order. We have not the means to examine the exercise of the judge's discretion in this matter, for no exception has been taken to the preliminary order, and we know nothing of the merits of the application but what respondent has told us in his declaration. We, however, do know by the admissions of the declaration, that the procedure of respondent was a compensation of the claim of Symes & Co. to the amount of that claim. It might however have been necessary to examine the appellant's claim for all that exceeds the amount pleaded by way of set-off (Sec. 21), that is to say for all the demand beyond £2,929 4s. But from the view we take of the plea of prescription, this distinction becomes unimportant.

The learned judge in the Court below dismissed the plea in so far as it regards the prescription of five years, on the ground that it was introduced by the civil code (2260 s. 4.), and therefore as the prescription in this case began to run before the promulgation of the code, the old prescriptions apply (2270). He also dismissed the part of the plea of prescription, invoking the limitation of 6 years, and we are unanimously of opinion that the learned judge was right in dismissing the plea setting up both of these limitations. With regard to the latter, the prescription of six years was introduced by the 10 and 11 Vic., c. 11, and continued by cap. 67, C. S. L. C. Sec. 1 is in these words, "no action of account or upon the case, nor any action grounded upon any lending or contract without specialty, shall be maintainable in or with regard to any commercial matter, unless such action is commenced within six years next after the cause of such action." And section 5 enacts that "This act shall apply to the

case of any debt of a commercial nature, alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise."

There can be no doubt that this is an action of account; it is also, I fancy, an action on the case; but it is contended that it is not on a contract without specialty. "Specialty" is a technicality foreign to our law. We have not the division of contracts into parol and special contracts as I understand it to exist in the English law. We have therefore to interpret the meaning of this word as applied to our contracts, which are seldom under seal; and in doing this, we cannot come to any conclusion other than this: that a contract before notary is equivalent to an English contract under seal. It is our most solemn act.

The next question that arises is whether all the transactions with regard to this ship fall within the covenants of this deed. It seems to me that the answer to this question must be in favor of the respondent. It is perfectly evident that the deed contemplated further advances than those made before the sailing of the vessel, and that the deed was to apply to them. If this position be correct, Symes & Co. bound themselves to keep the vessel insured for all their advances. Now the contention of this Respondent is that the advances were not so covered at the time of the loss of the vessel, and that, therefore, he was not only relieved of any indebtedness to Symes & Co. for a balance, but that as Symes & Co. had received for him more than the insurance, the Appellants were liable to reimburse him what he had lost by this neglect of Symes & Co. In other words that Symes & Co. were paid off by the insurance.

To this it is answered that the insurance really covered the advances at the time of the loss, that Appellants were not obliged to do more, except at the special demand of Gingras, who not only never made such a demand, but who knew all the time the amount of the insurance, was satisfied therewith, and that it was his interest not to put the insurance higher than was necessary for reasonable safety, as he had to pay the premium, and that no one contemplated the total loss of a new ship between Liverpool and Quebec. It was also contended that Symes & Co. could not be liable to insure the ship for a greater amount than its value, for which it was insured, and that in fact they could not insure it for more.

I cannot concur with appellants in all these pretensions. There is no evidence that respondent acquiesced in any alteration of the contract, and I do not think parol evidence is admissible to prove that he had consented to a lower insurance than that stipulated in the deed—that is, to the insurance of all advances. Nor do I think the respondent is obliged to enter into the question of whether Symes & Co. could have insured the ship for a greater amount. In addition to this, there is no evidence to establish that the ship could not have been insured for the full amount of Symes & Co.'s advances.

On the other hand, I cannot see how we are to hold the appellants bound to any other obligation than to keep the vessel insured for the advances due at the time of the loss. The question then is, what were Symes & Co.'s advances on the 25th of April, 1855, when the ship was last heard of? This is a mere question of accounts, and it has been so fully explained by the learned Chief Justice, that it is quite unnecessary to allude to the details further than to say that I entirely concur in the principle on which he has made the calculations and the result at which he has arrived. The only point of difference between the members of the Court was as to the application of the monies coming from the "Agamemnon" transactions. It is not denied that if applicable to the "Empress Eugenie" accounts, they were received prior to the loss. But, it is said, Symes & Co. charged them to the general account of Gingras. I am at a loss to see what effect that should have on the contract, which distinctly states that all money coming to Symes & Co. on account of Gingras should go to the extinction of the advances on account of the "Empress Eugenie." It was a mere matter of book-keeping for the information of the firm. Probably they had separate accounts for the "Agamemnon" and the "Alliance," and so forth; but although a man's books may be used against him as evidence of admissions in certain cases, parties are not liable for their books, but for their contracts. The evidence of Mr. Knight was violently attacked on the ground of interest, and bias, and it was also maintained that his evidence was inadmissible. We know nothing against Mr. Knight's integrity, he has no apparent interest, and there is nothing in his evidence to lead us to think it is open to suspicion. As to its admissibility, we have given no heed to it except in so far as it goes to show the state of the accounts. I know of no rule of law which says that evidence of this kind is illegal. It will be observed that the Court has not allowed any evidence to alter or affect in any way the deed, which has been interpreted throughout in the sense given it by respondent. The judgment turns on the application of the monies received. It is not unworthy of remark that in general principle there is no difference of opinion among the judges, and that Mr. Justice Casault seems to have treated "advances" exactly as we do, for he deducted the freight gained on the "Empress Eugenie" on her voyage from Quebec to Liverpool. I therefore fully concur in the opinion of the learned Chief Justice.