

Case No. 5,014.

{Crabbe, 271.}¹

FOX V. PAINE ET AL.

District Court, E. D. Pennsylvania.

June 18, 1839.

SHIPPING—REGISTRY AND ENROLMENT—PART OWNER—FOREIGN
VESSEL—VOYAGE DISAPPROVED BY PART OWNER—SECURITY.

1. E. F. a part owner of a vessel, known to be so by the other owners, not having, when he became a part owner, complied with the acts of congress, such omission not being for purposes of fraud or concealment, one of the other owners obtained an enrolment of the vessel, swearing that he and some others, totally omitting E. F., were sole owners. E. F. is entitled to ask the court for security, from the other owners, for the safety of the vessel on a voyage not approved by him.

{Cited in The Marengo, Case No. 9,066.}

2. An omission in the registry and enrolment of an American vessel does not make her foreign, but, at best, only deprives her of her American privileges.
3. It is not unlawful for Americans to be part owners of a foreign ship; but she will not become entitled thereby to American privileges.
4. Where the owner of One-eighth of a schooner disapproved of a voyage sanctioned by the other part owners, the court ordered the other part owners to secure the dissentient in double the value of his share.

{Cited in The Marengo, Case No. 9,066; Coyne v. Caples, 8 Fed. 640.}

The libel in this case alleged that the libellant {Evan Fox} was the owner of one eighth part of the schooner [Lodemia and Eliza]; that the

other owners, to wit, Levi Paine [the master], William S. Reed, William Murphy, and Isaiah Dunlap, were about to send her to sea, on a voyage to New Orleans, against the consent of the libellant; and prayed for security in the usual way, to the amount of the libellant's interest in the schooner, conditioned for her safe return. Stipulations having been given to abide by the decree of the court on the petition, the vessel was allowed to proceed to sea. The application was, at first, resisted on the ground that the libellant had no interest or ownership in the schooner. A supplemental answer was afterwards filed, setting forth that, although the libellant might hold a bill of sale, for one eighth of the schooner, from John Compton, a former owner, yet that, as neither the libellant nor Compton had complied with the requisitions of the acts of congress, not having delivered to the collector of the port the former enrolment of the schooner, nor applied to the secretary of the treasury for an order on the collector to grant a new enrolment and license, not having taken and transmitted to the proper collector, the oath or affirmation required by law, they, or either of them, were not entitled, by the law of the land, or the practice of the court, to ask the interposition and aid of the court in the manner set forth in the libel. It appeared that the libellant had not, on his becoming a part owner, complied with the requisitions of the various registry acts, &c; that his omission to do so was not for any purpose of fraud or concealment; that the bill of sale, from Compton to the libellant, was drawn up by an officer in the custom-house where the schooner was subsequently enrolled; that William Murphy, another part owner, had caused the schooner to be enrolled as being the sole property of himself together with Levi Paine, William S. Reed, and Isaiah Dunlap, he making oath to that effect; and that, at the time of such enrolment, the interest of the libellant in the schooner was fully known to the other part owners.

!!St G. T. Campbell, for libellant

The interest of the libellant, and the jurisdiction of the court are undoubted. The only question is, whether or no the libellant has forfeited his right to come into court, by any act or omission on his part; that is, by not having his name inserted as an owner on the enrolment and license? There is nothing in the act of 31st December, 1792 (1 Story's Laws, 269), respecting enrolments and licenses, which deprives the party of the right to come into this court No fraud has been intended upon the revenue here; the bill of sale to the libellant was drawn by a customhouse officer, at the very place where the vessel was enrolled, and it is by the neglect of that officer that the libellant's name has been omitted from the documents. The libellant is in fact a part owner, whatever the enrolment or license may say, and, as such, has a right to the protection of this court. The other owners, by omitting to put his name in the papers, cannot deprive him of his rights, most especially against; themselves. *Bronde v. Haven* [Case No. 1,924]; *Strelly v. Winson*, 1 Vern. 297; *Graves v. Saweer*, T. Raym. 15.

(G. M. Wharton, for respondent

The libellant has neglected or refused to comply with the laws of the United States, in regard to the ownership of vessels, and yet he comes into court to claim all the privileges and rights of an owner according to law. Act Feb. 18, 1793 (1 Story's Laws, 285); Act Dec. 31, 1792 (1 Story's Laws, 268), §§ 3-5,11,14; Act March 2, 1797 (1 Story's Laws, 453). The libellant has endangered the national character of the vessel by not complying with the fifth section of the act of 1792. In England, the law makes all bills of sale of vessels void, unless the revenue regulations are complied with; but here the vessel only loses her national character and privileges. The libellant is not the part owner of a national vessel, and therefore this court will not aid him.

Mr. Campbell, for libellant, in conclusion.

All the other part owners knew of the libellant's interest. In regard to the alleged violation of the fifth section of the act of 1792, the time therein allowed has not yet expired. If a citizen of the United States was part owner of a prize, he could come into court and ask for such security as is now demanded.

HOPKINSON, District Judge (after stating the facts as above). The ownership of the libellant has been made out very clearly. The schooner appears to have been built by one John Compton, for himself and others. On the 15th of September, 1838, he executed bills of sale to the other owners, in the proportions to which they were respectively entitled, to wit, one fourth to William S. Reed, one fourth to William Murphy, one eighth to Levi Paine, and one eighth to Isaiah Dunlap, the other one fourth remaining his own. On the 15th October, 1838, Compton transferred one eighth of the schooner, that is, one half of his fourth, to Evan Fox, the libellant, for the consideration of \$669 96. There is nothing to impeach the validity or fairness of this sale; on the contrary, there is positive proof that Fox gave full value for it. The interest of Fox, to the amount stated in his libel, being thus established, the defence is left on the ground set forth in the supplemental answer, that is, that the libellant does not appear to be an owner of the schooner in her enrolment and license, and has not complied with the requisitions of the revenue laws. We must recollect that this is not a question between the United States and this vessel, or her owners, or any of them; nor a question of the rights of this vessel, or her owners, in navigating her under the laws of the United States, nor to what privileges she is entitled

under those laws. It is a question between the owners themselves, and their rights against each other.

It is in full evidence that the respondents well knew of the purchase, by the libellant, of one eighth part of this schooner, from the same person, Compton, from whom they derived their title. The officer of the customhouse at Bridgetown, where she was built, also knew of the bill of sale from Compton to Fox, it being drawn by him. It seems, also, that Fox applied at the custom-house of this port, to have his name inserted in the enrolment and license of the schooner, and produced his bill of sale, but was told that, as all the owners resided in another district, new papers could not be granted here. There was, therefore, no attempt at fraud or concealment by Fox, either from the other owners, or the government. The right of Fox, and the agreement between him and Compton, by which he obtained it, were well known to the other owners. Yet, in April last, William Murphy, one of the owners, went to the custom-house at Bridgetown, and there swore that he, together with Levi Paine, William S. Reed, and Isaiah Dunlap, were the sole owners of the schooner, wholly omitting the name of Fox. Now, putting Fox out of question, how are these respondents the sole owners? They have shown title to but three fourths. Whatever right Compton had not transferred to Fox, he assigned to his creditors, on the 26th October, 1838, eleven days after his transfer of one eighth to Fox. We find, then, that Murphy, well knowing of Fox's right, goes to the custom-house, and swears that he, Paine, Reed, and Dunlap, are the sole owners of the schooner, and gets the enrolment and license, accordingly; and now, when Fox claims, against them, his right as a part owner, they tell him he has lost it, because his name is not in the enrolment and license. And why is it not there? By whose act was it omitted? Did Murphy give Fox notice of his intention to take out the enrolment and license, and to omit his name? Never. It is impossible for any court to sanction such a defence, unless under the imperative commands of the law. The omission in the registry and enrolment of this schooner, does not make it, in point of fact, a foreign vessel. It can but deprive her of the privileges of an American, but her ownership is, in truth, American.

Granting that the omission of the name of Fox has deprived the vessel of American privileges, whose fault was it? If a fraud has been committed on the revenue laws, whose fraud was it? Certainly not the libellant's. He had no part in the false statement made at the custom-house; it was not known to him. There was a double deception practised by Murphy; first, on the custom-house, and then on Fox, and now Murphy attempts to visit the consequences of his illegal act on the libellant. But suppose the consequence of this omission were even to convert the schooner, in point of law, into a foreign ship. Is there anything unlawful in an American citizen becoming a part owner of a foreign ship? Certainly not. He cannot claim for her American privileges; but as between the owners, their rights" are the same. These owners have entered her as an American ship, the tonnage

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duties have been assessed as such, and they cannot now be allowed to tell this court that their knowingly omitting to insert the libellant's name in her license, has deprived her of her national character.

It is ordered and decreed, that William Murphy, William S. Reed, Isaiah Dunlap, and Levi Paine, enter into stipulations in the sum \$1340, being double the estimated value of one eighth part of the said schooner Lodemia and Eliza, to Evan Fox, the libellant, owner of the said one eighth part for the return of the said schooner to the amount of the share of the said Evan Fox; and, unless they shall do so, they do severally consent that execution shall issue forth against them, their heirs, executors, administrators, goods, and chattels, wheresoever the same shall be found; and upon this being done, by sufficient sureties, the said schooner shall be released from arrest

¹ [Reported by William H. Crabbe, Esq.]