

Case No. 5,123.

[2 Curt. 426.]²

THE FRIENDSHIP.

Circuit Court, D. Maine.

Sept. Term, 1855.

JURISDICTION IN ADMIRALTY—PETITORY SUITS—SUIT BY PART OWNER.

1. The admiralty has jurisdiction over petitory suits.

[Cited in *The Comet*, Case No. 3,050; *Grigg v. The Clarissa Ann*, Id. 5,826.]

2. A part owner may sustain such a suit against a merely fraudulent possessor, without joining the other part owners; and if they do not appear, or object, and the libellant establishes his title, the court will decree the possession to him.

{Appeal from the district court of the United States for the district of Maine.

{In admiralty.}

CURTIS, Circuit Justice. This is a petitory action to try the title of the libellant to one half the schooner *Friendship*. It is objected that the court has not jurisdiction. But I consider that question settled for this circuit by the case of *The Tilton* [Case No. 14,054]. It is also insisted that it is admitted by the libel, that one Peter Hardy is the lawful owner of one half of the schooner, and that he is not before the court. But he might have appeared, if he had chosen to do so, and the utmost effect of his non-appearance is, that the court might conclude that he has no desire to have the claimant Haskell deprived of the possession of the vessel. *The Valiant*, 1 W. Rob. Adm. 64.

Upon the proofs, it appears, in substance, that Haskell, the claimant, obtained his apparent paper title to one half the vessel through a forged bill of sale; and that the libellant is the true and lawful owner thereof. And the question is, whether the other part owner, by failing to appear, can prevent his co-owner from trying his title as against a mere wrongdoer, and having established it, whether the court will not, as against that wrongdoer, decree the possession to the libellant. I am of opinion that it will try the title, and dispossess the fraudulent possessor, even in the absence of the other tenant in common. He has no interest in this dispute, and there is no reason for requiring him to be made a party to it. He may have no wish to have the possession changed; for he may be willing that whichever of these parties may be the true owner of a moiety should possess and manage the vessel. But I cannot presume from his mere silence, that he desires a fraudulent possession to continue, and if he did, I am not prepared to admit that it ought to affect the action of the court. If this were a cause of possession, he, owning a moiety, would have an equal right to the possession if he chose to assert it. But it is a petitory action. The decree divests only the fraudulent and unlawful possession of the claimant. The real part owners will stand wholly unaffected thereby, as respects the employment of the vessel. This objection is overruled.

The FRIENDSHIP.

The decree of the district court [case unreported], establishing the title of the libellant to one moiety of the schooner, and decreeing the possession to him, is affirmed.

² [Reported by Hon. B. R. Curtis, Circuit Justice.]