

## THE OCEAN.

{1 Spr. 535;<sup>1</sup> 18 Hunt, Mer. Mag. 295.}

District Court, D. Massachusetts.

Feb., 1848.

SHIPPING—BILL OF SALE—DEFEASIBLE UPON  
CERTAIN CONDITIONS—RIGHTS OF THIRD  
PERSONS—JOINT OWNERS—THEIR RESPECTIVE  
RIGHTS.

1. Where there is a bill of sale of a vessel, absolute on its face, but by a collateral agreement between the parties, defeasible upon certain conditions, third persons cannot avail themselves of such conditions to defeat the title of the grantee.
2. Where two persons were joint and equal owners of a vessel, and one of them, while in possession as ship's husband, improperly left her in an unsafe condition, with no person on board, and the other half owner took possession, the court refused to interfere with such possession.

This was a libel in a cause of possession. The libellant [J. N. Harding] was owner of one-half of the schooner Ocean, the other half belonging to one Eaton, of New York, who gave a bill of sale of his half to the claimant, as collateral security for a debt. The libellant, as managing owner, and ship's husband, sent the vessel upon a voyage, and after her return, had made some preparations for sending her upon another, but had, for several days, left her in an unsafe condition, not properly fastened, nor locked up and with no one on board. While in this condition, the claimant [C. A. Replier] took possession of her, and refused to give her up to the libellant, claiming at the time (under a mistake of title), the entire ownership. After this suit was brought, he abandoned the claim for the whole vessel, and relied on his title under Eaton, to one-half, and claimed the right to possession. The libellant contended that the claimant's title under Eaton, was void, he not having fulfilled the terms of

his collateral agreement; and that if the claimant's title was good, the right to possession was in the libellant, who had never abandoned the general possession and oversight of the vessel, and had equitable claims upon her for advances, and by reason of contracts for a new voyage.

R. H. Dana, Jr., for libellant.

C. L. Hancock, for claimant.

SPRAGUE, District Judge. The bill of sale from Eaton to the claimant, is absolute on its face, conveying all right of property which Eaton had. This is valid as against third persons. Eaton alone could take advantage of a forfeiture growing out of any collateral agreement, and it is not competent for the libellant to dispute the claimant's title. Considering, therefore, the claimant as rightfully holding the part that originally belonged to Eaton, it becomes a simple question 524 of possession between half owners. From the evidence, the court is satisfied that the libellant so negligently kept the vessel, that the claimant was warranted in taking possession of her. The next question is, was he bound to restore her to the libellant upon request? It has not been shown that the libellant has claims on the vessel for advances, or by reason of any contract for a new voyage, which establish an equity in his favor. I must leave the possession where I found it, that is, with the claimant.

As the libellant has suggested that this suit would not have been brought, but for the claimant's assertion of title to the whole vessel, there should be no costs prior to the amendment of the claim.

Decree that the libel be dismissed, with costs to the claimant after the filing of his answer.

<sup>1</sup> [Reported by P. E. Parker, Esq., assisted by Charles Francis Adams, Jr., Esq., and here reprinted by permission.]

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