

principal. And it is only on such a representation that Murphy would be liable on his implied warranty as agent. [Reference to *Beatty v. Lord Ebury*, L. R. 7 Ch. 800.]

There was no misrepresentation in point of fact as to agency. The offer was for a sale of the vessel by Murphy when Bentley knew he had only a part interest therein. Murphy assumed that Craig would be satisfied with the proposed sale, but there was no representation that he would get in Craig's interest.

As Murphy would not transfer his shares without a mortgage on the vessel or promissory notes which he could discount, the defendants are entitled to recover such damages as they may be able to shew on a reference.

Before accepting a reference the plaintiffs had better consider what their position would have been if they had become the assignees of Murphy's interest and the owners of a moiety in the vessel.

If Craig was in possession of the vessel, his authority over her would be supreme. Where a vessel is owned in moieties, the owner who is in possession seems for all practical purposes to have the power of the majority, while the right of his co-owner seems to be restricted to those of a minority: *Abbott*, 14th ed., p. 120. He might refuse to employ the vessel in any venture which the new owners of Murphy's moiety might desire to use her in. He might be unwilling to run the risk of becoming bound as a partner for supplies for the vessel, which he would be if he consented to the vessel going into employment. For the position of the parties is altered when the owners determine to exercise the right of using her—the part owners of a ship becoming partners in respect of the voyage, its expenses and profits: *Abbott*, 14th ed., p. 132.

The costs of the reference will be at the plaintiffs' risk if in the result they are entitled only to nominal damages.

If a reference is not accepted, there will be judgment for the plaintiffs for nominal damages, fixed at \$20, with costs on the Superior Court scale.

LOUNT, J., agreed with the judgment of MACMAHON, J.

MEREDITH, C.J., dissented, holding that the authority of Murphy to act for his co-defendant as well as for himself in selling the vessel and entering into the contract with plaintiffs, and the subsequent ratification and adoption of the contract, had been satisfactorily shewn, and that specific performance should be decreed.