

does something equivalent thereto, is not entitled to an account of the money earned by the vessel for freight, &c. ; (but)

Where in a suit by the mortgagees of a part owner of a vessel the defendant, the owner of the other shares, admitted that he was sailing the vessel for the joint benefit of himself and the other owners—other than the plaintiffs, though previous to the institution of the suit he had only asked for the evidence that the agent of the plaintiffs really held the shares for them :

*Held*, that the fair inference was, that the defendant was sailing for whomsoever might be the owners or entitled to the earnings ; and that having had sufficient information to acquaint him of the fact that the plaintiffs had acquired the shares either as mortgagees or owners he had thus recognized their right to demand an account.

Merchants' Bank' v. Graham, 524.

2. *Quere*, whether co-owners of a vessel have a right to share in the profits thereof earned in ventures to which they do not assent, as a majority of the owners can employ the vessel against the will of the minority, who, however, can compel the majority to give a bond to restore the vessel in safety or pay the value of their shares. In such case the minority do not share the hazard, neither are they entitled to the benefit of the voyage. *Ib.*

3. One *C.* entered into agreements with several parties to carry freights for them at certain named prices to be paid to the defendant—not mentioning any particular vessels in which the same were to be carried—and then agreed with the defendant, as part owner and master of vessels in which the plaintiffs had an interest, at rates considerably below the sums agreed upon. The defendant and *C.* both swore that the arrangement had not been made by *C.* as agent of the defendant, but for his own benefit.

*Held*, that the fact of the defendant having rendered an account in his own name and also sued for a portion of the freight, though aided by the other circumstances mentioned in the judgment, was not sufficient to countervail the positive denials of the defendant and *C.*, that the contracts had not been made in behalf of and as agent for the defendant, freight being *prima facie* payable to the master of a vessel, and the cargo need not be delivered by him until the freight thereof is paid ; although in any other transaction such conduct would have been strong evidence that the defendant was the principal contractor. *Ib.*

4. The plaintiffs who were mortgagees of a vessel, in exercise of a power of sale contained in their security, on default of payment sold the interest of their debtor by auction, when the same was bought by one who held it in trust for the mortgagees :

*Held*, that the effect of such sale and purchase was, that the plaintiffs remained mortgagees only of the interest so sold. *Ib.*