

the whole of the cash payment, but, subject to that, he ratified and confirmed the agreement for sale by Murphy. He held, however, that specific performance should not be enforced unless plaintiffs were willing to do equity by giving a mortgage on the vessel for the unpaid purchase money. There was a finding for plaintiffs against both defendants upon the contract, and a reference was ordered as to damages.

The plaintiffs appealed on the grounds that damages were not an adequate remedy, and that the trial Judge erred as to the mortgage for the unpaid purchase money.

The defendant Craig appealed on the ground that he and Murphy were not partners, and Murphy had no authority to dispose of his (Craig's) shares in the vessel.

The appeal was heard by MEREDITH, C.J., MACMAHON, J., LOUNT, J.

L. G. McCarthy, K.C., and A. M. Stewart, for plaintiffs.

T. Mulvey, K.C., for defendant Murphy.

C. H. Ritchie, K.C., and A. E. Knox, for defendant Craig.

MACMAHON, J. (after stating the facts at length):—One of the findings in the judgment is, that defendants were partners in the venture, i.e., in the ownership of the vessel. That was not the relationship existing between them. The learned trial Judge, entertaining that view, was doubtless influenced to some extent in reaching a conclusion that there was a valid contract binding on both defendants. For, if they were partners in the venture, Craig would be bound by Murphy's offer.

[Reference to Abbott on Shipping, 14th ed., pp. 116, 129, and to Lindley on Partnership, 6th ed., pp. 25, 26, as to the difference between co-ownership and partnership.] . . .

Craig says Murphy was not authorized by him, and had no authority to give an option on his behalf for the sale of the steamer. This direct and positive statement remains uncontradicted. . . .

It was urged that, even if Murphy had no authority from Craig to give the option, what is contained in Craig's letter of the 9th June to Murphy, and his subsequent conduct, shew ratification of Murphy's act. Craig stated in the letter that he would wire Murphy on the Tuesday "if I can get off with the Government, and if so you had better get the Toronto people (the plaintiffs) to promise all cash, and then wire him (Craig) to go to Toronto to close deal." The letter in effect says: "If the plaintiffs pay cash for the vessel, I am willing to sell, and, on being notified that they will do so, I will go to Toronto and close the deal." On the 11th (Tuesday) Craig telegraphed Murphy: "If Toronto parties pay cash for my