

may have thought of the expediency of selling at that time, and in the mode adopted, they did not give the defendant the benefit of their greater experience and knowledge on the subject.

Some circumstances have been relied upon to show that the defendant, even after the purchase on the 26th of August, 1850, did not regard the vessel as belonging to him, such for example, as hiring seamen and charging their wages to the joint concern. This, certainly, he had no right to do, but I cannot persuade myself he meant by it to show or admit that he did not claim to be the exclusive owner of the vessel after the sale. He paid the purchase money to Winter & Latimer, the plaintiff's agents, and resold without any consultation with them.

I do not think, therefore, the complainant has a right to treat the first sale as a nullity and to participate in the profits upon the resale.

The next question relates to the right of the defendant to charge commissions on the freights collected by him in San Francisco.

The evidence of Holmes, the clerk of the complainant, is directly opposed to any such charge, and that of Nicholson, one of the former joint owners of the vessel is equally explicit upon the point, during the period of his ownership. This proof, in my opinion, is sufficient to overrule the answer. It is true, the evidence of Nicholson does not relate to the voyage to San Francisco, but it may, I think, be referred to in corroboration of the proof of Holmes, which is positive and unequivocal that the defendant, for his services upon this identical voyage, was to receive no compensation beyond his pay, which was to be at the rate of fifty dollars per month. The agreement on the part of the defendant to make no charge for his services in the foreign port, was founded on a valuable consideration, as shown by Holmes. This consideration was a corresponding agreement by the complainant to charge nothing for his services as agent and ship-husband in Baltimore, a stipulation which he faithfully complied with, it appearing by the proof that he collected