

case the proposition to depart from the statute is the more excusable from the fact that the Lansdowne had already signified her intention to adhere to it.

We do not wish to be understood as extenuating in any degree the obvious fault of the Lansdowne in sailing without a lookout. We have no doubt that, having regard to the number of vessels in the Detroit river, to the valuable lives that the Lansdowne had on board, to her great size and speed, and the tremendous energy with which she moved, that it was grossly careless for her to navigate without a lookout, and we should promptly condemn her in this case did we find that this contributed to the collision; but we think that in her management, in the course she took, in the signals she gave to her wheel, to her engineer, and to the approaching vessel, she was guilty of no fault. She appears, too, to have sighted the Clarion as soon as she left her slip. In this connection I call attention to the language of Judge WOODRUFF in the case of *The Comet*, 9 Blatchf. 329, in which he says that where one vessel has been guilty of a clear fault, there should also be clear evidence of a contributing fault on the part of the other vessel in order to divide the damages. "It should not be enough that they make the care and skill and good management of the other vessel doubtful." We are unable to put our finger upon any fault committed by the Lansdowne, aside from the technical one of being insufficiently manned.

There must be a decree for the libellant, and a reference to a commissioner to assess the damages.

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### BORLAND v. ZITTOSEN and others.<sup>1</sup>

(*District Court, S. D. New York. March 30, 1886.*)

#### 1. SHIPS AND SHIPPING—SUPPLIES—PAYMENT—PART OWNER'S NOTE—DISCHARGE OF OTHER OWNERS.

Supplies were furnished to a vessel by one B., who received on account of it the four-months note of Z., the ship's husband and a part owner. Z. subsequently became insolvent. The note was protested, and this action was brought by B. against all the owners for the value of the supplies. It appeared that B., in so taking the note, did the best he could to obtain payment. *Held*, that such taking of Z.'s note by B. was not a discharge of the other part owners.

#### 2. SAME — EQUITABLE ESTOPPEL—EVIDENCE—ADMISSIONS, UNSATISFACTORY NATURE OF.

The master of the vessel, previous to remitting several sums of money to Z., had caused inquiries to be made of B. as to whether his bill for supplies had been paid. After B.'s death several witnesses testified that B. had admitted that it had been paid or settled by Z., and the captain made several remittances to Z., as managing owner. Z. was, however, a creditor of the ship and of the other owners on joint account, to a much larger amount than the amount of the remittances thus sent him. It was contended that this admis-

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

sion by B. created an equitable estoppel, which discharged the respondents. *Held*, on the evidence, (1) that the alleged statements of B. were improbable, and not satisfactorily proved; and, (2) if made, were not shown to have been made with any intent to induce payment to Z. by the master, or with any knowledge that they were likely to do so; and (3) that it was not shown that respondents were pecuniarily prejudiced by the misrepresentations so that it would be unjust to allow libellant's claim. *Held*, therefore, that an estoppel had not been made out, and that libellant should recover.

**8. SAME—NOMINAL OWNER—PERSONAL LIABILITY FOR SUPPLIES—MASTER OR MANAGING OWNER'S AUTHORITY TO BIND.**

"The law is well settled in this country that a mere registered owner, holding a nominal title only for the benefit of another, and taking no part or interest in the vessel's business, is not personally liable for supplies furnished. In such cases, though the vessel may be bound *in rem*, the master or managing owner has no authority to bind the merely nominal owner personally."

In Admiralty.

*Wilcox, Adams & Macklin*, for libellant.

*Goodrich, Deady & Platt*, for respondents.

BROWN, J. This libel was filed to recover a bill of \$1,441.77 for supplies furnished by the libellant to the ship *Zephyr* in June, 1883. The proof shows that the registered owners were the defendants Zittlosen, Springler, and Booth; but that Booth was a mere nominal owner, holding his interest for the benefit of the defendant Kruger, a prior registered owner, in whose interest the voyages continued to be made as before; that Zittlosen was ship's husband and general agent of the vessel in New York; and that Booth took no part and had no beneficial interest in her navigation. The amount of the supplies was admitted.

The law is well settled in this country that a mere registered owner, holding a nominal title only for the benefit of another, and taking no part or interest in the vessel's business, is not personally liable for supplies furnished. In such cases, though the vessel may be bound *in rem*, the master or ship's agent has no authority to bind the merely nominal owner personally. *Macy v. Wheeler*, 30 N. Y. 231, 241; *Stedman v. Feidler*, 20 N. Y. 437; *Scull v. Raymond*, 18 Fed. Rep. 547, 549, 550, and cases there cited. If, in any such case, an equitable estoppel might arise against a registered owner through the effect of the registry and the representations of the captain or agent, the estoppel could not arise where the material-man was put upon his guard, or had reason to suppose that the registered owner was a merely nominal owner for the benefit of another. In this case I think the evidence is sufficient to show that the libellant knew that Booth, though one of the registered owners, had no interest in the vessel. In *Brodie v. Howard*, 17 C. B. 109, 121, and *Frayser v. Cuthbertson*, 6 Q. B. Div. 93, knowledge that a part owner dissented was held immaterial. It was held a sufficient defense that the other owners and the master had no authority to bind him. Upon either ground the defendant Booth must be held not liable in this case.

In September, 1883, the libellant took the note of Zittlosen, the ship's husband, at four months, for the amount of the bill. Before

it matured Zittlosen became insolvent, and the note was protested, and has never been paid. The libellant died, and the case was continued by his administratrix. It is contended that the other defendants are discharged, on the ground of equitable estoppel, because the master, before remitting to Zittlosen, the ship's husband, several sums of money in August, 1883, amounting altogether to about \$7,500, caused inquiries to be made of Borland, through Kruger, whether his bill for supplies had been paid; and that Borland, in answer to these inquiries, stated that it had been paid or settled by Zittlosen; and that in consequence of this statement the remittances were sent by the master to Zittlosen; and that but for such assurances the master would have paid the libellant's bill through some other channel, as some question already existed as to Zittlosen's credit. If a material-man voluntarily takes a note or bill from the ship's husband, or one of the part owners, knowing that he might have the money from the other owners jointly liable, and the situation of the latter is afterwards altered for the worse through their dealings with the agent, no doubt the owners are discharged. *Macl. Shipp.* (3d Ed.) 113, 186; *Strong v. Hart*, 6 Barn. & C. 160. But in this case the evidence does not suggest any intimation to Borland that he might have procured the money from any other person than Zittlosen. He was the only authorized channel of payment. So far as appears, Borland, in taking Zittlosen's note, did the best he could to obtain payment. The master was away; Booth, I think, was known not to be really interested in the matter; and Kruger was known not to be the person from whom payment was expected, or in any condition to pay. Taking the note of Zittlosen was, therefore, not in itself any discharge of the other defendants. *In re The Salem's Cargo*, 1 Spr. 392; *Bottomley v. Nuttall*, 5 C. B. (N. S.) 122; *Muldon v. Whitlock*, 1 Cow. 290; *Davison v. Donaldson*, 9 Q. B. Div. 623.

The estoppel relied on is based upon the alleged statements or admissions of Borland, which three witnesses testified were made by him to Kruger in July, 1883, to the effect that he had been paid, or had been settled with, by Zittlosen. If the proofs satisfied me that statements of this kind had been deliberately made by Borland, and made either with the design to influence the remittance of funds to Zittlosen, or under circumstances that Borland might reasonably have supposed would influence the conduct of the other owners, and that the other owners, relying upon these statements, had afterwards remitted funds to Zittlosen to their prejudice, no doubt a legal estoppel would be made out against any subsequent claim upon the other owners; for the remittance and the consequent injury would in that case have been chargeable to the wrongful misrepresentation of the creditor. *Thomson v. Davenport*, 9 Barn. & C. 78; *Robinson v. Read*, Id. 449; *Irvine v. Watson*, 5 Q. B. Div. 414; *Davison v. Donaldson*, 9 Q. B. Div. 623; *Heald v. Kenworthy*, 10 Exch. 739, 746; *Berwind v. Schultz*, 25 Fed. Rep. 912, 920; *The Irthington*, post, 143.