

paid upon his claim, and that no settlement had been made in reference to it; although it is probable from other testimony that some efforts had been made to obtain it. The note was not taken until in September. No motive is suggested that Borland could have had to state untruly that his claim was either paid or settled. Had it been intimated to him that the captain would send him the money for his bill, there is no possible doubt that he would have accepted the proposition at once. No such intimation was given him.

2. Whatever the conversation may have been, it is not stated that there was any suggestion to Borland that the inquiry was made in the master's behalf, or intended to be communicated to the master, or made with reference to securing the payment of the libellant's bill; or that any remittances of money to Zittlosen were intended. Kruger, to whom the statements are said to have been made, was at the time largely indebted to the ship, and no payment or settlement was expected by Borland through him. So far as related, the conversation, even as testified to, would seem merely casual. Estoppels of this character are based upon the obligations of good faith. This obligation is mutual, and requires that no estoppel be drawn from conversations merely, unless the person answering inquiries knows, or has reason from the circumstances to believe, that the action of others is likely to be influenced by his answers. *Pierce v. Andrews*, 6 Cush. 4; *Bigelow*, Estop. 484, 529, 541. There was nothing to indicate anything of this kind to Borland. Whatever the conversations referred to may have been, I am not satisfied that the testimony as to Borland's remarks fairly represents all that occurred. The remarks may have been misunderstood, or imperfectly reported, or not seriously meant. He could not have supposed or suspected that they would influence any one's conduct. They may have been mere *facetiae* or *persiflage*, or made after the note had been taken in September,—too late to operate as an estoppel.

3. To constitute an estoppel it must further appear that the defendants have been legally prejudiced; that is, so substantially injured that it would be *unjust* to allow the libellant's demand. The evidence fails to show this. The proof shows that both the other owners were indebted to the ship, and to Zittlosen, as ship's husband, far beyond all the moneys remitted by the captain, after the alleged statements of Borland. If the captain had paid Borland's bill, so much less would have been remitted to Zittlosen, and the liability of the master and of Kruger to him have been so much more. It is not claimed, and there is no reason to suppose, that the master would not have sent to Zittlosen the remaining \$6,000. As a creditor of the ship he was entitled to that money. It was a matter of indifference to these defendants whether their indebtedness was to Zittlosen alone, or to Borland and Zittlosen. They have lost nothing by paying the whole \$7,500 to Zittlosen, instead of paying some \$1,500 of it to Borland. The fact that so large an amount of money, in excess of Bor-

land's bill, was sent to Zittlosen, renders it improbable that the conduct of the defendants in sending the money to Zittlosen was at all induced by Borland's statements; or that the master's inquiry by letter to Kruger was anything more than a mere voluntary friendly act for Borland's security. Even this possible view is somewhat doubtful, from the fact that the alleged intention to pay Borland directly, rather than through Zittlosen, if he was not already paid, was in no way communicated to Borland at the time, as it naturally would have been if really intended; and that alleged intent even now rests solely upon these long subsequent statements of mere secret, uncommunicated intentions at that time. Upon my strong doubts of the correctness of the testimony as to the statements alleged to have been made by Borland, the absence of any corroborative circumstances, and of any offer to pay him at the time, and upon the evidence showing that there has been no substantial legal prejudice as respects the liabilities of the defendants, on the whole, I must hold the estoppel not made out. *Macl. Shipp.* 114, 186; *The Active*, *Olc.* 286; *Robinson v. Read*, 9 *Barn. & C.* 449; *Muldon v. Whitlock*, 1 *Cow.* 290; *Berwind v. Schultz*, 25 *Fed. Rep.* 912, 920; *Keay v. Fenwick*, 1 *C. P. Div.* 745, 754.

The libellant is entitled to a decree against all the defendants, with costs, except as against Booth, against whom the libel is dismissed, with costs.

THE EDWIN I. MORRISON.¹

BRADLEY FERTILIZER CO. v. THE EDWIN I. MORRISON.

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

CARRIER OF GOODS BY VESSEL—UNSEAWORTHINESS—PERILS OF THE SEA—DAMAGE TO CARGO—PUMP-HOLE—TAKING IN WATER—INSECURE FASTENINGS—NEGLIGENCE.

The schooner *M.*, while on a voyage down the coast, deeply loaded, in the winter season, was discovered to be making water rapidly. When the crew were about to take to the boats, it was discovered that the water was being taken in through one of the bilge pump holes, the cap of which had come off. The proof showed articles washed about the deck. On the hole being covered, the vessel was pumped free, but the cargo had been damaged by the water taken aboard, and this suit was brought for such damage. The vessel had been in constant use for some 11 years, in all weathers. There had never before been any accident from these pump-holes. It appeared that the cap of the pump-hole had never been unscrewed, or its fastenings tested, for several years at the least. *Held*, that the cap was carried away on account of the weakness of its fastenings, and not from any extraordinary contingency; and that while there was no reason to charge the vessel with any defect in her original construction with such pump-holes, she was bound, before starting at this season, so deeply loaded, to have seen to it that the plates and caps were secure against ordinary accidents, and she was liable for damage to her cargo caused by her neglect to do so.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.