

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.

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THE EDWIN I. MORRISON.<sup>1</sup>

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.

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

In Admiralty.

*Scudder & Carter*, for libelants.

*Wilcox, Adams & Macklin*, for claimant.

Brown, J. The libel in this case was filed against the schooner Edwin I. Morrison to recover for the damage done to a cargo of guano by sea-water taken aboard on the tenth day of January, 1884, on her voyage from Boston to Savannah. The schooner sailed on the fifth of January, and, according to her log, on the afternoon of the ninth of January met a very strong gale and heavy sea, and shipped great quantities of water. The 10th opened with a strong westerly gale, sea running very high. "At 8 A. M.," as the log continues, "set two reef foresail and *storm trysail, and hove vessel to, heading about south.* Found that the vessel is making water faster than we can pump her out with both pumps, *the men not being able to work at pumping steadily because of heavy seas sweeping her decks.* Sounded pumps, and found that she has seven feet of water in the hold. Cut the boat lashings, and got all ready to leave vessel, when found that the cap had washed off the bilge pump hole on the port side. Nailed a piece of sheet lead over it, and started both pumps agoing. Pumped two hours, and sounded again, and found that we are freeing her very rapidly." The words above quoted in italics have been added to the log at some time since the original entry. The figure "7" is written over an erasure. The damage sued for was occasioned by the flooding of the hold.

The evidence leaves no doubt that most of the water was taken in through the bilge pump hole referred to in the above extract from the log. This was a hole on the port side, in the water-ways, a short distance only in front of the poop, and ran down through the water-way between the ceiling and the skin of the ship. There was a similar hole on the starboard side. They were placed there in the construction of the ship for the purpose of running a hose down in the bilges so as to pump out the water more thoroughly in case of a light cargo and much rolling. The hole was from three to four inches in diameter, and was covered by a brass plate about four inches square, countersunk into the timber, through which was a hole covered by a brass cap which screwed into the plate. The plate was fastened into the water-ways by screws. Such bilge pump holes are not unusual in vessels constructed in some localities, and seldom have any accidents arisen from them. The mode of covering them above described was deemed perfectly secure. Such caps usually project a little above the surface of the water-way, the upper edge of the cap being beveled off so as to leave usually not more than an eighth of an inch of perpendicular surface. The only question in this case is whether, considering all the circumstances, any negligence is shown either in the handling of the ship, or in the sufficiency of her equipment as a seaworthy vessel, as respects the proper security of this port cap and plate.

The schooner was built some 11 years previous. These holes had never been used. They were dangerous unless the caps and plates to cover them were kept perfectly tight and secure. The obligation to keep watch of their condition was as stringent as the danger from weakness in them was extreme; yet there is no satisfactory evidence that there had been more than a casual examination of them since the schooner was built. The evidence shows that up to about half past 4 a. m. of the 10th the schooner had made no more water than was speedily pumped out in the ordinary handling of the pumps every two hours. Upon renewing the pumping at half past 4, and not obtaining a suck as soon as usual, the captain, at 5 a. m., sounded and found 18 inches of water in the hold. The schooner at that time, according to the captain's testimony, was on the port tack, lying to. In order to man the pumps better she was then put before the wind, with the wind on the starboard quarter, which gave her a list to port of about two streaks. Notwithstanding the constant pumping, she continued settling till 9 o'clock, when seven feet of water was found in the hold. The captain supposed she had sprung a leak, probably through her bow ports. About 11 o'clock they wore ship, which presently brought her port side out of water; when, through the gurgling in the bilge pump hole, the second mate discovered the opening, as the master and crew were on the point of abandoning her. The opening was soon covered with sheet lead, and shortly after the ship was speedily lightened by the use of the pumps. The second mate, who took charge of the watch at half past 4, says that she was then on the starboard tack; but he also says her booms were on the starboard side, and that the port side was lowest in the water, and that it was 8 o'clock when they kept her off on the same tack.

The theory of the defense is that the plate and cap were perfectly tight; but that, through the many seas taken aboard and the washing about of many articles upon the deck, particularly of the heavy covers of the chain lockers that had got adrift, the bilge plate and cover, though perfectly sound and tight in their setting, were knocked off by violence or some accidental blow of the floating articles. For the libelants it is urged that this explanation is purely hypothetical, and not entitled to be accepted as a discharge of the ship's presumptive liability.

1. I do not find any reason to charge the ship with any defect in her original construction by reason of having the bilge pump holes. The fact that they were quite commonly used in the construction of such vessels, and deemed safe; that this schooner had been in constant use during all weathers for some 11 years without any previous accident from them; that the existence of these holes was obvious upon any careful inspection or survey of the schooner; and that no objection has ever been made to them,—are a sufficient answer to any charge of unseaworthiness from the mere fact of having such holes. It is, doubtless, possible that if one of the heavy chain locker