to be a public nuisance. The existing obligations of the lessor and lessee, as between themselves, would not be affected by such a declaration, however well authorized.

The doctrine of estoppel is not confined to the case of an occupant of land who is strictly a renter, and whose debt is strictly rent. Thus, in Eastman v. Tuttle, 1 Cow. 248, it was held that "in assumpsit by A. against B. for depasturing and keeping on hay the cattle of B., at his request, on land in A.'s possession, B. is estopped to show that the title of the land was not in A., but in B., at the time the services were performed." It is, moreover, a general principle that one who enters into a contractual relation with another is estopped from asserting, at variance with his contract, a hostile title to the subject-matter not subsequently acquired. Kinsman v. Parkhurst, 18 How. 289; Board v. Allen, 99 N. Y. 539, 2 N. E. 459. The decision in The Idaho, 93 U. S. 575, respecting the duty of the bailee of personal property to deliver it to the true owner, rather than to the bailor, is in conformity with the principle which has been stated, because the contract of bailment is to restore the property, or to account for it; "and he does so account for it when he has yielded it to the claim of one who has right paramount to that of his bailor." In this case, the shipowners had impliedly promised to pay for the individual benefits which they received from the use of the wharf, and, so long as the state permits it to be used, their contracts must be performed.

The decree of the district court is affirmed, with interest and costs of this suit.

LACOMBE, Circuit Judge (dissenting). I am constrained to dissent from the opinion of the court. The case seems to me distinguishable from the authorities cited as to the tenant's liability for rent when the landlord is a trespasser. This particular structure is illegal, not because the apparent owner has built it upon the land of another, who might himself have built it, had he chosen so to do. It is a structure whose erection by any one, whether a private person or not, is expressly prohibited by the sovereign power. No mere failure to prosecute by the public officers whose duty it is to cause its removal can change its character. I concur with the statement in the opinion of the court that, although built on land belonging to the state, "the state has no claim against the claimants for wharfage"; but I cannot see how the persons who put the obstruction there can have any better claim. Moreover, I do not think a court of admiralty should lend its aid to individuals who, not only without authority, but in flat defiance of the express orders of the state, have placed an obstruction to navigation in that part of a water way which has been reserved as a fair way for the vessels of all comers, and who seek to make a profit out of the transaction. If claimant had used so much of libelants' structure as was lawfully erected, the case might be different; but, so far as the facts show, the Idlewild simply tied up at the outer end of the wharf, and did not use any part of it for a landing. I am unable to differentiate this case from one where a private person, having driven two piles into the channel

of a public watercourse six feet from shore (the state forbidding the placing of any such obstruction therein), should seek the aid of the court to recover compensation from a vessel which tied up to the piles, and which, had he not placed them there, might have anchored herself, bow and stern, in the same place.

THE SILVIA.

FRANKLIN SUGAR-REFINING CO. v. THE SILVIA.

(District Court, S. D. New York. November 24, 1894.)

SHIPPING—NEGLIGENCE OF VESSEL—ACT FEB. 13, 1893.

Under the act of congress of February 13, 1893, providing that a shipowner who exercises due diligence to make his vessel seaworthy, and properly equipped and supplied, shall not be liable for damage resulting from errors in navigation or in the management of said vessel, an owner who equips his vessel with proper ports, glasses, and iron covers for the ports, of the usual kind, is not liable for damage resulting from the omission of the officers of the vessel, at the time of sailing on a voyage, to close the iron covers over the glass port lights, in consequence of which water breaks through the glass and injures the cargo.

This was a libel by the Franklin Sugar-Refining Company against the steamship Silvia to recover damages for injury to a quantity of sugar consigned to libelant.

Wing, Shoudy & Putnam (Charles C. Burlingham, of counsel), for libelant.

Convers & Kirlin, for claimant.

BROWN, District Judge. On the delivery of the libelant's consignment of sugar by the steamship Silvia, in Philadelphia, in February, 1894, a quantity of the sugar was found to have been damaged by sea water which had got into the ship through a glass port light, broken during the voyage. The port was supplied with a proper iron cover or dummy, which, however, was not closed or made fast at the time of sailing, although the hatches leading downward into that compartment were battened down. This, in my judgment, was negligence on the part of the ship, for which the vessel and the owners would have been liable (Steele v. Steamship Co., 3 App. Cas. 72; The Carron Park, 15 Prob. Div. 205), but for the provisions of the act of congress known as the "Harter Act," passed February 13, 1893 (27 Stat. p. 445, c. 105; 2 Supp. Rev. St. p. 81, c. 105,) which, by section 3, provides:

"That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners, agent or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel."

For the libelant it has been contended that the ship was not in a seaworthy condition on sailing, by reason of the fact that the covers for the glass ports were not properly closed, though the hatches