

relief to the vigilant and to put all parties upon the exercise of a reasonable degree of diligence. So if the fact be unknown to both parties, or in regard to which each has equal and adequate means of information, if in such cases the parties have acted with good faith, equity will not interfere. 1 *Story's Eq.*, sections 148, 149, 150.

It cannot, upon the state of this record as it now stands, be affirmed that the defendant has acted with bad faith. He swears his offer was made for the purpose of compromising a disputed account, and to avoid the evils of litigation. That he entertained objections well founded, in his opinion, to many of the items in the plaintiff's account, and that he had, as he believed, claims against the plaintiff counter to those which the plaintiff preferred against him. In this state of circumstances, and as he swears without any reference whatever to the balance appearing against him by the accounts sent him by the complainant, he made his offer of compromise, and surely in this, nothing indicative of bad faith can be discovered—nothing which looks like a disposition to overreach and take advantage of the complainant.

Nor do I find anything very material in the collateral circumstances pressed in the argument as manifestations of fraud. It must be recollected that the accounts in which the error occurred were forwarded by the complainant to the defendant on the 9th of October, 1849, and it was not until the 13th of the following month of December, that the latter wrote to the former, offering to pay him the sum of \$2000, "with a view," (as expressed in his letter,) "to an immediate and amicable settlement, and in full of all demands, on receiving back the policy and other documents concerning the brig in the plaintiff's possession." In this same letter, the defendant speaks of sundry overcharges in the plaintiff's account, but not particularizing them, and waiving these he made the offer referred to. Now, it seems to me it cannot be very fair to infer that if the defendant designed to impose upon the plaintiff by leading him into a settlement in which he had detected the error in question, that he would have said anything calculated to induce the complainant to a re-examination of it. He would, it seems to me, have said nothing