

company, would purchase a set of the plaintiff's manufacture, or a set of a rival in the trade. Furthermore, if the defendant should be compelled to pay the contract price for the machines, then the same would rightfully become the property of defendant, and in that event the latter company would then have the right to sell these machines to any third party, and the plaintiff could not object thereto on the ground that by such sale it would lose the profit it might have made by an independent sale to such third party. As the plaintiff could not deprive the defendant of the right to resell the machines if they became the property of the defendant by the payment of the purchase price, it cannot rightfully refuse to account for the market value of the articles, when the title and the possession thereof remain in it, and hence there is nothing in the facts of the case which takes it out of the general rule already stated. The facts of the case show a breach of contract on part of the defendant, but fail to show any actual damages, beyond a nominal amount, and the judgment will therefore be for the plaintiff for the sum of one dollar, without costs.

NICKERSON v. BIGELOW.

(District Court, E. D. Wisconsin. August 7, 1894.)

WRONGFUL DEATH—MEASURE OF DAMAGES.

Four thousand dollars, allowed as the pecuniary value to wife and children of the life of an able seaman, 26 years of age, sober, industrious, and of good physique, whose yearly earnings applicable to their benefit amounted to about \$300.

This was a libel by Harold W. Nickerson, administrator of the estate of Erik Anderson, to recover damages for death caused by collision.

Frank M. Hoyt, for libellant.
C. E. Kremer, for respondent.

SEAMAN, District Judge. This is a libel to recover for the death of Erik Anderson, alleged to have been caused by the negligence of respondent's steamer Robert Holland, having two barges in tow, and colliding with the schooner William Aldrich, November 1, 1891, off Pilot island, on Lake Michigan. The question of liability must be treated as ruled by the decision of this court in *Poppe v. Bigelow* (*The Robert Holland and The Parana*) 59 Fed. 200, for the present consideration. The only matter for determination is, therefore, the amount of damages; the death of Erik Anderson appearing, at least presumptively, while serving on board the schooner William Aldrich. The statute of Wisconsin, which applies here, limits the amount of recovery where death ensues to \$5,000. The allowance must be based entirely upon the showing of pecuniary loss suffered by the wife and children in their deprivation of the fruits of his labor and services by his untimely death. No consideration of sympathy or sentiment can enter in. It demands a sober judgment of the productive value of a life. There are no certain standards

for any case, and there are many contingencies upon productive life which do not enter into the standard tables of life expectancy. The fact that a statute limits all recoveries to a minimum amount should not be regarded as instituting any comparative estimate of the value of lives, but only as a limitation for all cases.

The testimony shows that the deceased was 26 years of age, was an able seaman on the Aldrich, and had sailed about 9 or 10 years. He was sober, industrious, and of good physique; but there is no showing to warrant a presumption, if any could be indulged, of increase of earning capacity. I think it satisfactorily appears that his gross earnings for a sailing season were about \$300; and he worked in the winter season (in shipyards and other employments) and probably earned sufficient to cover any further personal expenses; so that nearly \$300 remained at the end of the year for the benefit of the family. At his age and in his calling this rate may fairly be accepted as a criterion. For the libelant it is claimed that the full allowance of \$5,000 should be adjudged upon this proof, because interest upon that sum would produce \$300 at 6 per cent. per annum. This would not be a fair estimation, as the principal sum would remain for benefit after the termination of any life expectancy; the consideration should rather be of the probable value of an annuity charge to produce that income for the term of expectancy. There is difficulty in the application of life tables to this view; but I conclude, taking into account all the circumstances here shown, that an allowance of \$4,000 would be just and reasonable; and judgment for the libelants will be entered for that amount, with costs.

GOTTSCHALK CO. v. DISTILLING & CATTLE-FEEDING CO.

(Circuit Court, D. Illinois. April 24, 1894.)

1. SALE—AGREEMENT FOR REBATE—BREACH.

Where defendant sold liquors to plaintiff for more than its market value, agreeing to return part of the excess to plaintiff at the end of the six months if it appeared that plaintiff had made purchases from no one else, the fact that one of plaintiff's agents, accidentally, without plaintiff's knowledge, and without intention to violate the understanding of the parties, made a purchase from another person, will not prevent recovery by plaintiff of such excess.

2. SAME—FURNISHING PROOFS.

Nor will plaintiff be prevented from recovering by reason of failure to furnish a form, as stipulated with defendant, showing all the sales made by plaintiff, and to whom made, where he furnishes all the data necessary to enable defendant to ascertain if plaintiff had sold any goods other than those he had purchased of defendant.

Action by the Gottschalk Company against the Distilling & Cattle-Feeding Company. Judgment for plaintiff.

H. B. Stevens, for plaintiff.

Green & Robbins, for defendant.

GROSSCUP, District Judge (orally). The action in this case is to recover from the Distilling & Cattle-Feeding Company something