

such liens only continue in force for the period of three years from the time the cause of action accrued." 2 Ballinger's Ann. Codes & St. Wash. § 5953 (1 Hill's Code, § 1678). See, also, *The Willamette*, 59 Fed. 797; *Id.*, 18 C. C. A. 368, 70 Fed. 874.

If the facts pleaded by the widows and orphans who have appeared as cross libelants in this case are true, the law of the land entitles them to damages, and the law of the sea is not inconsistent with the rights which they seek to enforce. Exceptions overruled.

THE STYRIA.

(District Court, S. D. New York. July 7, 1899.)

SHIPPING—LIABILITY FOR DAMAGE TO GOODS—MEASURE OF DAMAGES.

Where goods damaged in shipment, for which damage the ship is liable (the invoice value being made the basis of settlement by the bill of lading), are sold on their arrival, the freight paid thereon or due should be deducted from the proceeds, and the remainder only credited to the carrier against the invoice value, to determine the amount of his liability.

Libels against the steamer *Styria*. For former opinion, see 93 Fed. 474.

Cowen, Wing, Putnam & Burlingham, for libelants.
Convers & Kirlin, for defendant.

BROWN, District Judge. By the contract of the bill of lading the invoice value is the basis of settlement on any loss or damage; and a construction seems to me unreasonable and in fact absurd, that would call for the same payment on a partial loss as upon a complete destruction of the goods. Here the special agreement, made pending the action, further limits recovery. There was no conversion of these goods; only a mistaken theory of the carrier's rights and duties. It was the carrier's duty to transport the goods and the consignee's to pay the freight, and that was ultimately done by each. No freight was due except upon delivery at New York; clause 2 of the stipulation recognizes the freight as a lien, incurred and charged upon the goods by the transportation; it was immaterial whether this lien for freight was paid before or after the sale; if not paid before sale, it must have been paid out of the proceeds of sale; and if paid by the consignee before sale, it was paid as a lien or charge incurred upon the goods, in accordance with both clauses of the stipulation, and hence to be deducted from the amount of proceeds of sale to be credited to the claimant against the whole damages, i. e. the invoice value as limited by the bill of lading which was adopted in the stipulation. *The Aline*, 23 Blatchf. 335, 343, 25 Fed. 562; *The Hadji*, 18 Fed. 459, affirmed in 20 Fed. 875; *The Lydian Monarch*, 23 Fed. 300. Presumptively the greater price received in this market upon the sale of the goods more than offsets the freight in bringing the goods here. The carrier under the stipulation gets the benefit of this presumed excess in the allowance of the net proceeds made to him.

Report confirmed.

THE TAURUS.

(District Court, S. D. New York. June 9, 1899.)

TOWAGE—LIABILITY OF TUG FOR INJURY TO TOW—ACTION IN EMERGENCY.

As a tug was entering Boston Harbor with a tow, in a fog, which had lightened sufficiently, however, to enable the master to keep the channel, she suddenly came upon a rock-breaker anchored in the channel, which had given no signal, though the tug had approached slowly, continually sounding her whistle. The rock-breaker had been recently removed from the east side of the channel, where it had been at work for some time, to near the west side, which fact was unknown to the master of the tug, who, as he could not see the shore, supposed it to be in the old position, and therefore changed his course, and attempted to pass to the west of it, in doing which he grounded, and one of his tows received injury. *Held*, that such facts did not establish negligence in the master, or want of ordinary nautical skill and prudence, but, at most, an error of judgment in an emergency, which did not render the tug liable for the injury.

In Admiralty. Libel against the steamtug Taurus to recover for injury to a tow. Dismissed.

On the 9th day of May, 1897, the barge *Templar*, laden with coal and drawing about 16 feet, was being towed into Boston Harbor, from New York, by the tug *Taurus*, in connection with two other vessels, the *Escort* and the *Ireland*. Before reaching the entrance to the harbor, the hawsers had been shortened, under directions from the tug, so that each was on a length of about 30 fathoms. The *Escort* was next to the tug, the *Templar* followed, and the *Ireland* was the last of the tow. Some fog had prevailed during the morning, and when the entrance to the harbor was nearly reached, the tug gave the tow preparatory signals with a view to anchoring in case the master concluded it would be necessary; but when the vicinity of Boston light was reached, the fog lightened, so that the master could see land occasionally, and he then concluded to go on. The tug went very slowly, continual soundings were made on her, fog signals were duly sounded and a lookout was properly stationed. After passing Boston light, the fog became more dense, but the master was able to make the buoys and keep in the channel. When the tug had reached a point opposite the narrows, or Bug light, she was in the usual channel. She then headed to the northwest to pass between Lovell's and George's Islands. The tide was about an hour and a half ebb, and set two or three points cross-wise of the channel, to overcome which, it was necessary to head the tug a little to the westward of the channel course. Soon after this course had been taken, a rock-breaker was suddenly discovered anchored in the channel, about 300 feet ahead and slightly on the tug's port bow. This rock-breaker had been towed into the harbor by the master of the *Taurus* about two months before, and during that time it had, to his knowledge, been continually working on a ledge in the eastern part of the channel, near the southern end of Lovell's Island. When the tug came near, there was some shouting on the rock-breaker, but no bell had been or was rung on her though the tug was sounding her fog whistle regularly. It appeared that since the master of the tug had last seen the rock-breaker, a few days before, her position had been changed from the east side of the channel to the westward of the center of the channel. Supposing her to be in the place where he had last seen her, and that he had been carried to the easterly side of the channel by the effect of the cross tide, the master starboarded the helm of the tug and passed to the westward of the rock-breaker and a tug lying at right angles to her. No land was visible at the time, and the soundings, which were continued, showed the regular channel depths of 5 or 6 fathoms until the tug had passed the rock-breaker, when suddenly $3\frac{1}{2}$ fathoms were reported. The master then knew he was out of the channel, and ported his helm, but the tug at once took bottom on the westerly side of the channel and the *Escort* struck about the same time. The *Templar*, following the *Escort*, collided with her and suffered some damage, for which this action was brought.