

## 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.

Carpenter & Park, for libellant.  
 Wilcox, Adams & Green, for claimant.

BROWN, District Judge (after stating the facts). A tug in towing not being guarantor, is liable only for negligence, i. e. the lack of ordinary nautical skill and prudence. Does the evidence fairly warrant such a finding as regards the officers of the Taurus? I think not. The fog lightened as the master was about to anchor, and his judgment was that he could make his way through. The event actually proves his knowledge and skill, since in the dense fog he ran in the very center of the channel exactly where he ought to have been until the rock-breaker, recently moved, and giving no signal, deceived him, and caused him to sheer to the westward. Had signals been given properly from the rock-breaker he would have been warned. Knowing her previous place near the east shore, and hearing no signals, he naturally assumed he must have got too far to the eastward in the cross tide, and therefore starboarded. I think this ought to be treated as a sudden and unexpected emergency, naturally tending to mislead just as the pilot of the Taurus was misled. The case seems to me quite unlike *The Hercules*, 81 Fed. 218, in that regard. This case shows, in fact, a careful, skillful pilot working his way with precision until misled by the rock-breaker, which deceived him not only by change of place, but by not giving prior signals, such as she was bound to give on her actual change. This was not negligence in the pilot, but at most an error of judgment in a sudden emergency.

Libel dismissed without costs.

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#### THE CATSKILL

#### THE ST. JOHN.

(District Court, S. D. New York. July 8, 1899.)

#### 1. COLLISION—MUTUAL FAULT—LIMITED LIABILITY ACT—DISTRIBUTION OF PROCEEDS.

Where both vessels are held in fault for a collision which resulted in the loss of one vessel, and in the death and injury of passengers, and the loss of baggage and cargo, for which claims are filed, and the proceeds of the other vessel, surrendered under the limited liability act, are insufficient to pay all losses, the owners of the vessel destroyed are equitably estopped from claiming any part of the fund on account of the loss of the vessel until the claims of third parties, for which she is jointly liable, have been paid in full; and her insurers, who have paid the loss, are subrogated only to the rights of the owners.

#### 2. SAME—CLAIMS FOR DEATH AND PERSONAL INJURIES.

Claims for injury to the person and loss of life resulting from a collision are within the provisions of Rev. St. §§ 4284, 4285, which require the proceeds of the offending vessel, when surrendered, to be distributed among the claimants in proportion to their respective losses, and bar the claimants of other remedy; and the effect of those provisions is to make every admissible claim a statutory lien on the fund, and entitled to share therein pro rata, except as affected by equitable rights between the parties.

In Admiralty. Proceeding to limit liability on account of damages by collision. On distribution of proceeds of surrendered vessel.