

Case No. 4,251.
[9 Ben. 76.]¹

THE EAST.

District Court, N. D. New York.

March, 1877.

JURISDICTION IN REM—SEIZURE IN THE ST. LAWRENCE RIVER—FOREIGN
JUDGMENT—DAMAGES.

1. This court has jurisdiction, in a suit in rem, in admiralty, for a collision, of a vessel seized under process in the suit, in that part of the river St. Lawrence which is within the territorial limits of this district, without reference to the character of the vessel or of her voyage.
2. A judgment obtained in Canada by the libellant, in a suit at law against the owners of the vessel, for the same cause of action sued on here, is not a bar to the suit in rem here.
3. But such judgment is res adjudicata as to the extent of the damages sustained by the libellant by the collision, and is conclusive evidence as to the amount to be recovered here.

WALLACE, District Judge. Upon the facts stipulated, it appears that the East was a Canadian vessel, seized within the territorial boundaries of New York, while upon the St. Lawrence river, bound on a voyage between Canadian ports. The position, that this court will deal with the offending thing when brought within its jurisdiction, irrespective of the circumstances under which jurisdiction is acquired, is not tenable, to the extent urged by the libellants. This court should refuse to entertain jurisdiction where the offending vessel was seized in Canadian waters and wrongfully brought within the territorial jurisdiction of the court, and would not allow its own process to be used to invade the domain of a foreign sovereignty, and would decline to enforce a jurisdiction so obtained. But, although the waters of the St. Lawrence, upon which the seizure was made, are a highway, and, as such, common, for the purposes of navigation, to both Canada and the United States, that portion of the river within which the seizure was made is within the territorial limits of New York, and, therefore, within the territorial jurisdiction of this court; and, this being so, the character of the vessel, or

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of her voyage, or of the waters whereon she was seized, is of no materiality. The vessel was subject to seizure during all that portion of her voyage which was made within the boundaries of New York.

It appears that the libellants commenced an action at law against the owners of the vessel, in the court of queen's bench in Canada, and recovered judgment for the damages sustained by the collision which is the cause of action set forth in the libel. That judgment, I hold, is not a bar here. The libellants had a maritime lien arising from the collision. They had a right also to proceed in personam. Their lien was not merged in the judgment recovered in the Canadian court. Their cause of action was not satisfied by the recovery of the judgment. Until satisfaction, they have the right to enforce their lien.

The judgment of the court of queen's bench is, however, *res adjudicata* as to the extent of the libellants' damages sustained by the collision, and, as evidence of the amount the libellants are entitled to recover, it is conclusive.

The claimant, as the official assignee in insolvency of the owners of the vessel, has the right to intervene, and has sufficiently pleaded his right.

A decree is ordered for the libellants, in accordance with the views here expressed. I have not deemed it necessary to pass specifically upon the several exceptions to the claim and answer filed, as, under the stipulation of the parties, all the facts necessary to a decision of the case upon its merits are presented. Costs are awarded to the libellants.

¹ [Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted by permission.]