

in safety, with a repaired thrust shaft, nearly the same distance as was navigated by the Hekla, and while it is also true that in this instance the Hekla's thrust shaft was repaired three times, still this does not satisfy me that the delay was the only danger to which the Hekla was exposed. How long the Hekla's shaft, as finally repaired, would have endured, cannot be told. Each time that it was repaired before, it broke; and it appears in evidence that her owners—having, on her arrival in New York, an opportunity to ascertain the nature of the repairs made to the shaft—became satisfied that it would be unsafe to send her home again in that condition, and accordingly detained her in New York until a new shaft could be brought out from the other side. This shows, as it seems to me, that in the opinion of maritime men a steamship on the ocean, with her thrust shaft broken, is to be considered in a position of peril, although the shaft may be repaired on board. The officers of the ship thought her in peril, for, although they had repaired the shaft, they determined, in council, to take the first assistance that should be offered.

In view of the character of the property saved, the number of passengers on board the Hekla, the peril to passengers and to cargo, the constant exertion put forth in rendering the service (the master receiving severe injury in its performance), the skill displayed in the towing, and the successful result of the effort; considering, also, the value of the property at risk, the value of the salvaging vessel, and the resulting delay of 12 days,—I am of the opinion that the sum of \$30,000 is a proper salvage compensation. To this sum I add the amount of money actually expended by the America in re-coaling, etc., in New York.

The America, at the time of the rendition of this service, had on board 160 head of live cattle, which she was transporting to London. The owner of these cattle has intervened in this action, and claims to be entitled to share in the salvage award because of the fact that the detaining of his cattle on board the America during the 12 days that she was engaged in the rendition of this salvage service caused injury to his cattle. But the case of this shipper is similar to that presented to this court in the case of Goldsmith v. North German Lloyds, 23 Fed. 820. The decision in that case compels the dismissal of the petition. Following that decision, the petition of the interveners is dismissed, but without costs.

Let decrees be entered in conformity with this opinion.

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THE MARY FREELAND.

DAILEY v. THE MARY FREELAND.

(District Court, E. D. New York. July 11, 1894.)

**SALVAGE—DISTRIBUTION.**

A schooner, broken from her moorings, and drifting through Hell Gate, was boarded by men in a rowboat, who carried a hawser to the shore.

and made it fast. Afterwards, a tug came and lay by the schooner for some hours, and then towed her back to her dock. *Held*, that the men in the rowboat were the principal salvors, and should have the largest part of the salvage.

This was a libel by John D. Dailey against the schooner *Mary Freeland* to recover salvage. George Forcher, James S. Bennett, and James Norton intervened by petition, claiming to share in the salvage award.

The schooner, with a cargo of paving stones, and having a canal boat attached to her, broke loose from her moorings, and drifted through Hell Gate, in the East river. Just at dark the captain of the canal boat, who was the only man on board, succeeded in attracting the attention of three men in a rowboat, who came out to his assistance, and, the schooner being just then near the shore, they took a hawser from her, made it fast on shore, and two of them stayed by the schooner while the third went off to find the owner, or some one who could come to her relief. Meantime, a tugboat passing up the river was attracted by the shouts of the men, came to the schooner, lay by her for some hours, and finally took her in tow, and brought her to a dock at Astoria. The rowboat men, who lost their boat during the night, came in as petitioners for salvage under the libel filed by the tugboat.

Stewart & Macklin, for Dailey.

E. A. Carpenter, for petitioners.

Owen, Gray & Sturges, for claimants.

BENEDICT, District Judge. For the salvage services rendered to the schooner *Mary Freeland* on the night of the 12th of September, I consider \$750 a sufficient salvage compensation.

This sum should all be paid to the petitioners, George Forcher, James S. Bennett, and James Norton, except \$50, which should be paid to the libelant Dailey, for the services of the tug *Henry A. Crawford*. The \$700 may be divided among the three petitioners as follows: Three hundred dollars to the libelant Forcher, who was injured in the rendition of the service, and who also lost his boat, and the remainder divided equally among the other two petitioners. The claimants must also pay costs.

CONSOLIDATED WYOMING GOLD MIN. CO. v. CHAMPION MIN. CO.

(Circuit Court, N. D. California. March 6, 1893.)

1. **RES JUDICATA—JUDGMENT IN STATE COURT.**

A judgment of a state court, within and responsive to the issues made by the pleadings, directly upon a point, is, as a plea in bar and as evidence, conclusive between the same parties on the same matter in another action in the federal court.

2. **SAME—FEDERAL COURTS—JURISDICTION.**

The fact that a judgment in the state court in an action involving a contest between mining claims is *res judicata* of the questions litigated in an action removed to the federal court does not deprive such court of jurisdiction, as a contest between mining claims necessarily involves a consideration of the laws of the United States as to the location and the effect of end lines and side lines on the rights to the mineral veins and lodes, and as the evidence whereby these things are proved, whether direct or through estoppel by some act of the party, or by a judgment of a court, does not remove consideration of the laws as elements of decision.

Action by the Consolidated Wyoming Gold-Mining Company against the Champion Mining Company. Defendant files a plea in abatement of the jurisdiction. Denied.

Wilson & McCutchen, for complainant.

Edward Lynch and C. H. Lindley, for defendant.

McKENNA, Circuit Judge (orally). This is an action for trespass and for an injunction. It was originally brought in the state court, and was removed here on petition of defendant. The petition alleges a prior suit between the same parties in the state court (16 Pac. 513), the parties, however, being reversed; the plaintiff here being defendant, and the defendant plaintiff. A motion was made (based on the petition) to remand to the state court, on the ground that the petition showed that there had been a prior suit between the same parties in the state court, in which it was claimed that the judgment of the court left no question, federal or otherwise, to be litigated between the parties, except the fact and extent of trespass. This motion was denied on the ground that the petition showed that a federal question was involved. A plea in abatement to the jurisdiction was then filed, alleging specifically the judgment in the state court, to which the defendant made replication, in which it was claimed that the points involved in the present suit were not involved in the suit in the state court. The replication sets out the pleadings, findings, and judgment of the state court, from which it appears that issue was made, and that the court found and adjudicated on the location, and the time of the location, of the mining claims involved in the suit at bar,—determining in favor of the plaintiff here,—and also found that certain boundary lines were side lines, not end lines, as was alleged by defendant here (plaintiff in such prior suit), and, as conclusions of law, held and adjudicated as follows:

“The issues in this cause having been tried by the court without a jury, and the written decision of said court having been made on the 21st day of