

(1898) 10 CAL CK 0002
In the Calcutta High Court

German Steamship or Vessel "Drachenfels" The "Retrieves"	APPELLANT
Vs	
"Drachenfels" and Another	RESPONDENT

Date of Decision : 15-10-1898

Acts Referred:

Citation : (1898) 10 CAL CK 0002

Judgement

Stevens, J.—This is an application on behalf of the impugnants for consolidation of two actions for salvage. The application is resisted by the promovents in the suit brought by the owners of the S. S. Retriever. The promovents in the suit brought by S. S. Hooghly do not object. The main objections urged are that the two claims for salvage are entirely separate and unconnected, that no advantage is to be gained by the consolidation, and also that it is premature, because up to now the promovents have not in either action filed their written statement. As regards the last point it is to be observed that the application is of an urgent character, because upon it depends the question whether one or two commissions now applied for is to issue for the examination of certain witnesses, viz., the master, officers and crew of the S. S. Draehenfels. The issue of this commission is also opposed by some promovents on the grounds that it is premature, and that it is not in accordance with the practice. It is convenient to dispose of this last objection at once. It is stated on affidavit that the S. S. Draehenfels with her master, officers and crew will probably leave this port on or about the 20th or 21st day of this month, that the ship has been sold by her owners, that her officers and crew will probably be discharged on arriving at their port of destination, and that, unless, they are examined now under commission, their evidence is likely to be lost. This seems to me to be perfectly reasonable. It could not be expected that the ship with her officers and crew should be detained in Calcutta until these oases should come on for hearing in the ordinary course, and, I believe, it is in accordance with the usual practice of this Court in such cases to grant commissions for taking evidence de bene esse.

2. To return to the question of consolidation it appears that S. S. Draehenfels lost her rudder after proceeding to sea, and that, whilst she was endeavouring to

work her way to Saugor, she fell in with the steam tug Hooghly, which took her in tow, and brought her up for a certain distance in the river. It is, I understand, in respect of these services that the claim is made on behalf of the S. S. Hooghly. The S. S. Retriever afterwards took her in tow at a point higher up the river, at first in co-operation with the S. S. Hooghly, but afterwards independently of her. The S. S. Drachenfels grounded on her way up whilst in charge of the S. S. Retriever, and, as I understand, it is for salvage on the occasion of her grounding that the claim is made on behalf of the S. S. Retriever. I am not prepared to say that these services are so entirely unconnected as to render it improper to consolidate the two actions. There would unquestionably be a saving of expense by consolidating them, and it has not been shown to me there would be any inconvenience. This being so, and as in accordance with the ruling in the case of the Strathgarry (1895) L.R.P.D. 264, it is entirely within the discretion of this Court to consolidate the actions without regard to the consent of the parties, I direct that they be consolidated, and I further direct that the commission applied for do issue for examination of the master, officers and crew of the S. S. Draehenfels. I should reserve the costs of this application.

3. Mr. Orr.--Each of the promovents will be entitled to appear separately through their own attorney and counsel.

4. THE COURT.--Nothing has been said about it. That will follow as a matter of course. Mr. Hill asks that costs of this application be costs in the cause.

"RETRIEVER" V. "DRACHENFELS."

THE COURT.--Very well.