

Retriever and Vs. Drachenfels

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Decided On : Jan-25-1900

Reported in : (1900)ILR27Cal860

Judge : Ameer Ali, J.

Appellant : Retriever and ;hughli

Respondent : Drachenfels

Judgement :

Ameer Ali, J.

1. These two cases for salvage reward promoted respectively by the owners, captains and crews of the steam tugs Hughli and Retriever against the German steamship Drachenfels were consolidated at the instance of the latter ship by an order of this Court made on the 15th October 1898. To the consequence of this order I shall refer by and by, but I cannot help expressing at this stage my regret at the inordinate length of the hearing and the amount of public time, which, in spite of every endeavour on my part to keep the discussions confined to the real issues, has been spent over non-essentials. One other remark seems to me necessary before going to the facts of the case.

2. It was open to the parties to ask for the appointment of assessors and as they have not chosen to do so, should I fall into any misapprehension with regard to

any matter of technical detail, the responsibility must be theirs.

3. The Drachenfels is a German steamship of about 900 H.P., her nett tonnage being 1,573 or 1,574 tons, and her gross tonnage 2,463. She left Calcutta on the 11th September, and that same night at about 10 P.M. she discharged her pilot and stood out to sea. On the 12th she met bad weather. Admittedly she lost her rudder on the 13th, which fact, according to the captain of the Drachenfels, was discovered only on the 14th. She then tried to get back to Calcutta to remedy the damage that had happened to her. She got back to near about the Eastern Channel only on the 18th, and at 2 P.M. on that day Mr. Cox, the pilot, went on board of her, and at about 8 P.M. she anchored not far from the Eastern Channel Light. If I remember aright Mr. Cox says it was about 2 miles to the S.S.E.

4. Next morning about 1 A.M. the tug Hughli, which had received information from another vessel regarding the condition of the Drachenfels, went down to her and enquired, if her services were wanted. At present I am only giving the prominent facts, in order to explain how the case comes before me. I shall detail the other circumstances later on.

5. There was a conversation between Mr. Cox and the captain of the Hughli of which there can be no doubt the captain of the Drachenfels was cognisant

6. The Hughli's services were required and were accepted, and at about 2-30 in the morning the tugboat was fastened by a hawser to the stern of the Drachenfels to act as a rudder and steer her up the channel towards Saugor.

7. There is no doubt that at one stage of the journey the hawser broke. What happened thereafter is a matter of controversy, as also the time when and the place where it took place. To these matters I shall advert presently. A little while after, the Hughli was again fastened to the Drachenfels. This time with two hawsers, one of them, the wire one, parted, but the coir hawser held and the Hughli successfully did her work and brought the Drachenfels up to Saugor, somewhere about 1-30. The hawser was thrown off at about 2-30, and for some reason, which is again in dispute, it was lost.

8. There the two vessels remained at anchor on that day, namely, the 19th, and the Retriever, which had met them somewhere lower down, remained also in attendance at the request of Mr. Cox, who, I have no doubt, was acting for the captain of the Drachenfels during the whole time. Next morning at about 5-30 the two tugs were fastened to the Drachenfels, the Retriever on the starboard side, the Hughli on the port, in order to tow her up on her journey towards Calcutta. The Retriever is a bigger boat with stronger horse power than the Hughli and the Hughli appears, so far as I can gather from the evidence and the diagram which is in evidence, to have been lashed to the Drachenfels a little more forward than the sister-tug.

9. The Drachenfels was not to use her engines, until she got into a straighter channel. The flotilla, made up in the way I have described, went up the river, till they came to a place called the Gabtollah Channel.

10. The evidence for the promovents is that the flotilla entered the Gabtollah Channel by the usual track for ships, namely, the No. 3 Track, and after they had passed the Lower Spar Buoy somewhere abreast of the Lower Black Cask Buoy the ship took the ground. On taking ground she heeled over to starboard, most of the lashings of the two tugs gave way, with some difficulty they got clear of the Drachenfels and then moved off to get rid of the wreckage. After clearing the wreckage, the evidence is, they came back to the assistance of the Drachenfels, where she had grounded fast. The Retriever attempted unsuccessfully to pass her a hawser; then the Hughli tried, but met with an accident to one of her propellers, which completely disabled her from pursuing her efforts to help the grounded steamer. The Hughli was thus compelled to come up to Calcutta to have her propeller cleared, but the Retriever remained by, and next morning she pulled off the Drachenfels or assisted in pulling her off from the sands on which she had grounded. These are the bare outlines of the case which have given rise to these two claims.

11. The Hughli says that, having regard to the condition of the Drachenfels, her position at the Sandheads, the risk to which she was exposed and other circumstances to which I shall refer in some detail, the work which she performed

was salvage work or of the nature of salvage work, and that she is entitled to reward on that basis.

12. The Retriever's case is that the danger to which the Drachenfels was exposed on the sand after she grounded on the morning of the 20th was of an imminent character, and that the services, which she rendered to the disabled ship, were such as entitled her to salvage. It is unnecessary to refer here to the amount of the claims put forward by these two tugs.

13. Owing to the order of consolidation, which, as I have said before, was made at the instance of the Drachenfels, I am obliged to deal with these two claims in the same judgment with the consequence that in many matters I shall have to go from one to the other at the risk of complicating to some extent the discussion of the subject. It would have been preferable, if the two cases had been kept apart, for, as it seems to me, the claim of the Hughli is not connected with that of the Retriever or, if at all connected, it is so very remote degree; but owing to the order of consolidation the representatives of the Hughli have been obliged to be present during the trial of the case for the Retriever, and vice versa. I now come to the impugnant's case. Her case on the other hand is that she was in no danger at all at the Sandheads that she could have remained anchored there with perfect safety. It has even been contended that she could have drifted up the channel without any assistance from the Hughli, and the allegations of the Hughli regarding the nature of the work done by her, the character of her services, and so forth, have been disputed, and disputed with a minuteness as to which I shall have to say a word or two. The Drachenfels also alleges that the grounding was due to misconduct on the part of the masters of the tugs inasmuch as, to para-phrase the contention, they did not keep the pilot in charge advised of the course they were pursuing. She also contends that the Drachenfels could have got off by herself that night, if the pilot had come on board from the Tigris to which vessel he had gone for the night, and that, as a matter of fact, on the next day, the 21st, she got off the ground by her own exertions. I muse admit that although this latter allegation is what I gather from the evidence of Captain Kennewig, the learned Counsel for the Drachenfels did not go so far. He only contended that the Drachenfels by working her own engines contributed materially in getting herself off that morning from the

place where she had grounded. The principles governing the right to salvage remuneration are now too clearly recognised to require any lengthy discussion. For the purposes of the present case I may take it as a settled rule that any service rendered to a vessel in a state of peril or risk, or otherwise in distress, which contributes in some degree to its ultimate safety entitles the person rendering the service to salvage reward. Again the mere fact that the service was interrupted by accident or some like cause, if it has been productive of benefit to the owners, will not disentitle the salvors from their reward.

14. In the case of the *Camellia* (1883) L.R., 9 P.D., 27; 50 L.T., 126, Sir, Jambes Hannen stated that principle thus: 'I am of opinion that the principle laid down by Dr. Lushington and Sir R. Phillimore in the cases I have referred to, namely, that services which have contributed to the ultimate safety of a vessel, if interrupted before completion, without default of the salvor, are entitled to some remuneration, is applicable, not only to the case of a vessel saved from imminent risk of wreck, but also to a case like the present, where the vessel is brought into a position of greater comparative safety than that in which she was when she asked for assistance.'

15. It may also be taken as a settled rule that a mere towage service, or, as it is some times called, an ordinary towage service, may, in consequence of supervenient danger be converted into salvage service. The circumstances under which a service of towage becomes superseded by the right to salvage is described in the case of the *Minnehaha* (1861) 15 Moo. P.C., 133; Lush., 335. But the right to salvage may be wholly or partially forfeited by improper abandonment or by wilful misconduct or gross negligence on the part of the salvors. In the case of the *Atlas* (1862) 15 Moo. P.C. 329; Lush., 518, it was laid down that such misconduct must be conclusively proved by those who allege it in order to work a forfeiture.

16. Bearing in mind these principles, which I have stated here in general terms, let us examine the facts relating to these claims. But before proceeding further I think it would be desirable to refer for a moment to the chart which shows the channel up the river from the Sandheads to the entrance of the Gabtollah Channel.

17. The distance between the Eastern Channel Light and Saugor, the place where the Drachenfels anchored on the 19th, is stated by the witnesses to be forty-five miles. The Pilot's Ridge marked on chart A. is, I gather from the Imperial Gazetteer, 139-6 nautical miles from Calcutta vid the Western Channel.

18. Hunter in describing the estuary of the Hooghly below Kulpi, which is 49-7 nautical miles below Calcutta, says thus: 'The estuary of the Hooghly is famous for its dangerous and numerous sand banks, but they are subject to such great and rapid changes that any attempt at a minute description of them would be more mischievous than useful. The best known of them are the Gasper Sands and Saugor Sands. 'Leaving the Eastern Channel Light and passing the buoy between the Intermediate and Eastern Channel Lights we come to the Saugor Sands. Further up is the Lower Gasper and further up again is the Upper Gasper; we then come to the Middleton Sands and Long Sands. Bearing in mind these places it would be as well to know exactly the width of the channel as described in the evidence.

19. According to Mr. Kirkman the distance between the Lower Gasper and the Long Sand Light is 12 miles, and from the Lower Gasper Buoy to Middle-ton Sand is 6 miles. The width of the Channel between the Lower and Upper Gasper varies from 3 to $1\frac{1}{2}$ miles. At the Lower Gasper the available channel is about a mile, and between the Lower Gasper Light and the Station Buoy at the Upper Gasper, if I understand the evidence rightly, the channel is said to be ordinarily speaking half a mile or thereabouts.

20. Captain Best in his evidence says that the width of the narrowest part of the channel from the Lower Gasper to Saugor is about half a mile in places, and Mr. Kirkman says the most dangerous places along the route from the Sandheads to Saugor are to be found at the Gasper Sands, the Long Sands, the Middleton Bar, Middleton Spit and Saugor Flat.

21. There is one other circumstance disclosed in the evidence which must not be overlooked viz., what is stated by Mr. Kirkman, that the flood, tide setting towards Saugor runs north at the Lower Gasper Station Buoy away from the Western Sands, but dead on to the Middleton Sands.

22. At this stage I think I may also call attention to the evidence of the witnesses who speak about the dangers of the Hooghly and what they consist in. Two of the witnesses called by the promovents state these dangers in explicit terms, and I do not think there can be any doubt as to their existence. Mr. Paine says the dangers of the Hooghly are strong tides, cross-currents, constantly changing depths and generally intricate navigation and that the sands are constantly altering, some of them very rapidly. He is corroborated by several other witnesses and not contradicted in any respect by the other side.

23. Keeping these facts as to the nature of the river in mind, let us see what was the condition of the Drachenfels on the 18th or morning of the 19th when she accepted the assistance of the Hughli. As regards the condition of the Drachenfels herself it is worthy of note, that although Captain Kennewig tries to represent the vessel as not wholly disabled he admits that she was only partially under control. But the fact remains that she was 210 miles out when she discovered she had been disabled by the loss of her rudder, and it took her 5 days to make up the 210 miles and get within reach of the pilot brig.

24. Apparently she was first observed by Mr. Chase, who is totally unconnected with this case, and whose evidence I see no ground for disbelieving. Mr. Chase was struck by her movements which he describes in rather graphic terms. He says he remembers going as pilot on board the Agalaia in September '1898 and seeing the vessel which afterwards turned out to be the Drachenfels, that he saw the Drachenfels before he went on board the Agalaia, that he observed something which struck him as unusual. She was steering wildly, he went down to her in the Agalaia and when within hailing distance of her, he asked if he should send out tugs to her and that the reply was they would first like to consult their own pilot. They had no pilot on board at that time. He then returned to the pilot brig and reported the fact. He then towed down the pilot, Mr. Cox's boat, to the Drachenfels, and Mr. Cox, before he went on board the Drachenfels, asked him to send down two tugs to him; that on the way up he met the Hughli at Saugor and gave her certain instructions. Later on he met the Retriever to whom also he communicated similar instructions. In answer to the Court he says, speaking of Drachenfels, 'She was 1 think 3 or 4 hours in sight long before the Agalaia came

into sight. We saw her masts opening out and closing in. We knew that she was steering a wild course. She was moving anything between B.S.B. and North; yes it was her erratic movements which caused me to go up to her.' Then I asked him, if what he had said as to her not being under proper control, was an opinion formed from what he then saw of her movements. His answer is clear: 'Yes especially when we got near her, I did not want to go close to her. She was steering so wildly. I had to make a long circle and come up behind her. That was her position in the open at sea. Her position in shallow water would be worse. '

25. Captain Kennewig denies that he told Mr. Chase anything with regard to a tug or tugs. He says the only message or commission he entrusted him with was to inform the agents, Messrs. Graham & Co., that the Drachenfels had lost her rudder. On Mr. Chase's testimony I have no doubt that Captain Kennewig's statement is not correct and that what Mr. Chase states is true and likely to be true. It is very likely Captain Kennewig did not like to say anything as to whether the assistance of a. tug or tugs was necessary, till he got his pilot on board, and it is in evidence that before Mr. Cox got on board the Drachenfels he commissioned Mr. Chase to send down two tugs to the assistance of the Drachenfels. So far as the actual condition of the Drachenfels is concerned, it appears clearly from the evidence of Mr. Chase, which is corroborated by that of Mr. Cox, the pilot. He states in examination-in-chief that she was not manageable, and though cross-examined at considerable length and with great ingenuity he has stuck to the statement that the Drachenfels when he took her in charge was wholly unmanageable. He says he would not have attempted to go up to Saugor without assistance, and the expert evidence called by the promovents supports the view that it would not have been possible for the Drachenfels to work up the river without the assistance of a tug.

26. No doubt there is evidence on the other side upon which it is contended it was not only possible but would have been quite safe for the Drachenfels to go up the river without the assistance of the Hugli by dragging her own anchor and working her own engines. These are matters to which I shall refer later on.

27. Assuming her condition at that time to have been as is stated what would be her position working up the river without any assistance. As I have already pointed out, there are various places in the river which are extremely dangerous. The statements of Mr. Kirkman as to their clangors have not been contradicted, although Mr. Bellew, who has come forward on the part of the Drachenfels, traversed a large extent of ground to some of which I think it desirable to call attention.

28. The season of the year when these events took place was during the southwest monsoon, and the plaintiff's witnesses state that September is a most uncertain month regarding the springing up of cyclones, storms and changes in the weather. Mr. Bellew says he would regard October as the most treacherous month in the year. Whether October is more treacherous than September or vice versa is a question better fitted for discussion in some debating club than in a Court of Law.

29. The question which I have to determine is whether there is any chance of the weather changing in September so as to expose a vessel in the condition of the Drachenfels to risk and danger.

30. The chart, to which I have already referred, is issued under the authority of Government, and the notes thereon may be referred to as authoritative. I find one note, which is worthy of attention, worded thus: 'Caution.--Owners of vessels are strongly advised not to risk their vessels laying at anchor awaiting orders at the Sandheads between the months of April and November inclusive. Vessels are recommended to go into Saugor roads, where there is a safe anchorage and telegraph station.'

31. Apart from that note what are the facts which have been deposed to on both sides. In the first place I have the evidence of Captain Best and Mr. Durham, who were on the Hughli, of Mr. Cox, the pilot in charge of the Drachenfels. I have the evidence of several men from the pilot service who have been cross-examined at great length, but against whose testimony nothing has been shown to suggest that they have given their evidence with any interest in the case itself. One of them, Mr. Chase, saw the vessel at the Sandheads. Mr. Kirkman has piloted the Drachenfels

before, and knows the capacity of the vessel. He and the others are thoroughly conversant with the dangers of the Hooghly and the difficulties of navigation in it. I have also the evidence of a gentleman in Government service, who does not appear to be in any degree interested in the case. I refer to Captain Waller.

32. On the other hand several witnesses have been called on behalf of the Drachenfels, one of whom is Mr. Bellew, who is a pilot of long standing and experience, but the manner in which he introduced himself into the case or became connected with it, in my opinion, detracts considerably from the value of his testimony. The circumstances are detailed in his evidence, and I shall not take up time by dwelling on them. It is enough to say that I think learned Counsel for the promovents were not unjustified in their comment that his evidence should be accepted with considerable reserve and qualification. Captain Lardner was another witness on behalf of the Drachenfels. His experience of the river Hooghly is not very large. He was a long time ago in charge of a steamer for only three months as third officer, and though he hazarded opinions on a variety of subjects, his cross-examination has led me to the conclusion that not only was he a strong partisan, but that I cannot attach much weight to any of the opinions he has expressed in the case.

33. With reference to Captains Ashby and Thomson I shall make a few remarks when I come to that part of the case to which their evidence relates. I shall only say here that they, to use their own language, did not pretend to have any knowledge of the river Hooghly, and whatever they said, they said with regard to their own experience on those smaller rivers they mentioned, and in connection with those smaller tugs of which they had experience on those smaller rivers.

34. So far as Mr. Bellew's statements are concerned, to my mind they largely corroborate what has been stated by the expert witnesses called on behalf of the promovents. In my opinion the promovents' witnesses--apart from those who were eye-witnesses to various facts--have given their evidence with great reserve and an absence of partisanship, and I think I may fairly place reliance on their evidence when I find that in many respects they derive corroboration, or, if not corroboration, support from what Mr. Bellew says. I shall explain what I mean. It was contended

with considerable force that the Drachenfeh could have lain at anchor at the Sandheads with perfect safety; that the weather was settled so to speak at that time; that a storm had prevailed for some days before, that is to say, from the 12th and had passed over, and upon Mr. Bellew's statement it was said there was no prospect of a storm for a more or less definite period; that not only could the vessel have remained there in safety, but she could, if she liked, have drifted up the river in the way Mr. Bellew and Captain Lardner suggest. Mr. Bellew, however, says this, that he would not have done that himself, if he could have got assistance; when pressed hard as to why he would not, he said, he would not like to have 'fiddled about,'--that is his expression,--for a week or thereabouts. Whether he would have liked to do so or not is not a matter for me to consider now.

35. The question for my consideration is whether he in any way suggests that the ship in the condition in which she then was, did not require the assistance which she accepted and without which the other witnesses say she could not have got up to Saugor.

36. Mr. Cox, whatever his mistake, as to what occurred at the Gabtollah channel, if mistake it was, does not now at least appear to be in any way connected with the Hughli or the Retriever. If any case of bias was to be urged against him I think foundation should have been laid for it in cross-examination, and, that not having been made, I think his evidence is not to be put aside without careful consideration. He says he would not have ventured up the river, if assistance was not forthcoming; and four other men, men who follow the profession of pilots on this river and who have to bring up vessels and who are presumably in a position which entitles their statements to credence, say, that it was impossible to bring up the vessel in the condition she was without the assistance which she received. Captain Waller, a Government servant, is express on that point and he says the same thing.

37. Why am I, merely on the theorizing of a gentleman who is intimately connected with the conduct of this case, to put aside the whole of this evidence? But it is said the ship might have remained there and in safety. Again there is the evidence of these gentlemen to whom I have referred. The only evidence I have on the other

side is that of Mr. Bellew, for that of Captain Lardner does not touch the point. He has never had experience at the Sandheads of September weather. Mr. Bellew speaks, and speaks throughout with so many qualifications and reservations, that it is only necessary to refer to his evidence to see that he is a witness, whose testimony requires to be read with the greatest scrutiny. The witnesses for the promovents state that at any moment a storm might have sprung up and put the ship in peril. They describe those risks in their evidence and I do not propose to refer to them in detail. Mr. says that a storm having just passed over he would not expect another for a fortnight or so. That is a statement of a most indefinite character.

38. Certain passages from a book by some one named, I think, Marshall, were referred to, to tell me what would happen in September. I have no way of testing the statements in that book. I can only say that the testimony of the witnesses called and examined in Court are, to my mind, more reliable and of far more use than hypothetical statements in a book, the authority of which is uncertain. But Mr. O'Kinealy's contention is that the ship when at the Sandheads was not in any imminent danger, so as to entitle the tug to salvage reward.

39. In the cases of the Charlotte (1848) 3 W. Robinson, 68, and the Albion (1861) Lushington, 282, it is laid down that it is not necessary that the distress should be actual or immediate or that the danger should be imminent and absolute. It will be sufficient if, at the time the assistance is rendered, the ship has encountered any damage or misfortune which might possibly expose her to destruction, if the services were not rendered. And in the case of the Chetah (1868) L.R., 2 P.C. 205, which was strongly relied on for the impugnants, where also another vessel had acted as a rudder steering the disabled vessel from astern, though the Chetah was in no imminent danger--on which ground the high salvage award given by the lower Court was reduced,--the Privy Council held that there was considerable risk to the vessel salved which would entitle the salving vessel to remuneration. The facts are thus stated in the report: The Chetah had on the 17th of March 1867 whilst on a voyage from China to London met with an accident to her rudder whereby she was disabled. The master and crew constructed a jury rudder, but before they had fixed it she was fallen in with by the schooner Annie Grant, and

with her assistance the Chetah arrived off Waterford on the evening of the 27th of the same month. The Chetah was sailing with the Annie Grant astern and steering her from behind. Dealing with the claim of the Annie Grant their Lordships say as follows: After the most careful consideration of circumstances upon which the claim of the Annie Grant is founded and with an anxious desire that the salvors should receive not merely a fair but a liberal remuneration for their services, their Lordships have come to a conclusion as to the value of the services rendered widely differing from that of the learned Judge of the Court of Admiralty.' Then they say that the Chetah was not in that degree of peril which the learned Judge supposed, that 'she had indeed lost her rudder but this loss might have been supplied by some temporary expedient for which there were materials on board. The most important element in a claim for high salvage reward, viz., the imminent peril of destruction of the vessel to which assistance is rendered is therefore wanting in this case.' But they go on to add: 'That the Chetah was rescued from a situation of considerable peril by the exertion of the master and crew of the Annie Grant and by the application of proper means for securing her safety at a time when, being crippled by the loss of rudder, she would most probably, if not inevitably, have been driven on shore there can be little (if any) doubt, and the services of the Annie Grant have, therefore, been the means of saving very valuable property from impending destruction. That they are entitled to a high salvage reward it is impossible to deny.'

40. In the case of *The Albion* (1861) Lushington, 282, the possibility of danger was taken into consideration.

41. Similarly, in two cases in the Supreme Court here, in one of which the learned Judges carefully avoided using the word danger as being ambiguous, the risks arising from the possibility of bad weather were taken into consideration for the purpose of judging whether the services were in the nature of salvage or otherwise.

42. Bearing in mind then the risk of a change in the weather to which I have referred, and the consequences which might have resulted to the *Drachenfels* in the condition in which, she was, if she had remained there during bad weather I

proceed to deal with the mode in which the work of steering the Drachenfels up the river was performed by the Hughli.

43. The work commenced about 2-30 A.M., and according to the evidence of the Hughli was interrupted about 9. A.M. somewhere about the Lower Gasper by the parting of the hawser which fastened the Hughli to the Drachenfels. According to Captain Kennewig and his witnesses the parting is said to have taken place about daylight. The reason of this divergence seems to me perfectly clear. If the parting was at daylight it must have taken place some where the channel was very wide and there would be no risk of their coming to grief. If it parted about 9 A.M. it must have occurred as is alleged by the Hughli somewhere near the Lower Gasper Light and admittedly in a dangerous place and in a narrow channel, and it seems to me it was with that object that Captain Kennewig puts the parting of the hawser at daybreak, and denies the statement of the Hughli's witnesses that it was three hours later. That the evidence of Captain Kennewig and his witnesses must be viewed with considerable suspicion is clear from the entries appearing in his logs, especially the rough log, and other circumstances to which I shall refer presently.

44. Captain Best, Mr. Durham and Mr. Cox all swear that the hawser parted about 9 A.M. as already stated, somewhere near the Lower Gasper. Both Best and Cox say the operation throughout the journey from the Sandheads to Saugor was attended with considerable difficulty, and that in the course of it both vessels were exposed to great danger. Captains Best says he had to steam out sometimes broad on the sort quarter, sometimes broad on the starboard quarter and sometimes amidships in order to steer the and that the hawser was carried away, because the Drachenfels gave a heavy steer and he tried to straighten her up. According to Captain Kennewig the hawser parted first because it was rotten and secondly because no chafing gear was put on in time. Captain Best and Mr. Durham say that chafing gear was used from the outset and that the hawser was not rotten and Mr. Cox says no complaint was made regarding the hawser being rotten nor did he perceive it to be so. My own impression is that the charge about the condition of the hawser was an afterthought and made to minimise the value of the services rendered by the Hughli. So far as the difficulty and dangers of navigation are concerned, Mr. Bellew says in his opinion there would be no danger

or difficulty, if the work was done with skill and care. According to him, therefore, care and skill would be needed for the purpose of avoiding the dangers. Whatever the effect of his statements may be, the evidence of the other witnesses clearly shows that having regard to the nature of the channel and the other facts to which I have referred in connection with the navigation of the river Hooghly, the work performed was not of an ordinary kind, but was attended both with danger and difficulty and, if I may rely on that testimony, that it was performed with skill. Again I refer to the evidence of Captain Waller. It appears that this is the first case of the kind, viz., of steering with the tug astern on the Hooghly and it was successfully performed. In considering the question whether the service was of the nature of salvage service, the risks of navigation, the difficulty under which it was performed, and the danger in performing it have all to be taken into consideration. It is contended that the work was merely towage work. The distinction between towage and salvage has been pointed out in a number of cases in which the Judges have held that where the ship is in a normal condition and nothing more is needed than expedition or acceleration of progress, that is towage. I refer especially to the case of *The Jubilee* (1879) 42 L.T.R., 594. In the case of *The Reward* (1841) 1 W. Robinson, 174, it was also contended that the service rendered was mere towage. In that case the vessel had lost two of her best anchors and cables and the starboard end of the windlass and the bulkhead had been carried away. The learned Judge who decided that case said: 'I apprehend that mere towage service is confined to vessels that have received no injury or damage and that mere towage reward is payable in those cases only, where the vessel receiving the service is in the same condition she would ordinarily be in without having encountered damage or accident,' and the services were remunerated as salvage.

45. In my opinion the services rendered by the Hughli helped in rescuing the *Drachenfels*, which was in a disabled condition, and being rudderless as she was, was exposed to risk, if she lay there at anchor, and which was unable to work up the river without assistance--from a position of risk and brought her into a position of comparative safety. The impugnants not satisfied with denying the principal facts on which the Hughli bases her claim for salvage reward went into a variety of matters to show that the work done by the tug was improperly performed. It was suggested that instead of using one hawser of 75 or 80 fathoms she should have

used two of 35 fathoms each. No question was put to Captain Best in the course of his cross-examination, which extends over 77 pages of printed matter, regarding this contention. No doubt when Mr. Cox was examined he was questioned whether it would not have been better, if two hawsers had been used. He said 'No' and he gave his reasons and I accept those reasons.

46. Captains Ashby and Thompson spoke of two hawsers being used on various rivers in England and the continent, but they have no experience of the river Hooghly, and it is admitted by Captain Lardner that instead of the 7-inch hawsers used on those other rivers, 18-inch hawsers are in use on the river Hooghly. To expect that an 18-inch hawser should be slackened out and hauled in from time to time is, I judge from the expert evidence, absurd, and I see no reason to suppose that what Mr. Cox states is not well founded, namely, that the proper mode of steering the vessel was adopted in this case.

47. It was suggested that, if shorter and double hawsers had been used there would have been less sheer. This contention again has been answered by the witnesses for the promovents. Mr. Cox shows what would have happened and so do the other witnesses, especially Mr. Kirkman. These objections, no doubt, helped in prolonging the case, but to my mind they were absolutely useless in rendering any assistance to the Court to arrive at a conclusion whether the promovents are entitled to salvage reward or not.

48. With these remarks I proceed to the other part of the case.

49. From Saugor to the Gabtollah Channel where the Drachenfels grounded is said to be 8 or 9 miles. The Gabtollah Channel is described by some of the witnesses to be equally dangerous with the James and Mary or at least coming next to it. The shoals and sands are shifting there as throughout the worst part of the Hooghly. According to Captain Best the buoys on the eastern side of the channel serve to mark the edge of the channel in some way, but the sands jut out from the line of buoys. This evidence was elicited in cross-examination and I do not find it contradicted. The sands are so shifting that they require continuous watching and sounding, and Mr. Bellew says that the soundings taken from time to time do not give any true indication of the water at the different places. That in

brief is the state of the Gabtollah Channel.

50. That channel is usually entered by one of three tracks; No. 3 is said to be the best for ships of high draught, No. 2 is the next best, No. 1 is not used for ships. All these things have to be kept in view by vessels going up that channel.

51. It is in evidence that on the morning of the 20th under the orders of Mr. Cox the flotilla made up as mentioned before and being about 98 feet in width started, from Saugor to enter the Gabtollah Channel. A controversy has raged about the hour at which the flotilla started and we have heard a considerable amount of examination and cross-examination as to the proper time at which it ought to have started. Mr. Cox says it was the proper time; Mr. Bellew does not venture to say it was not a proper time. He admits that the pilot was justified in starting at that hour, but he says: 'Though I would have been tempted to start at that hour I would not have done so.' It is difficult to understand his exact meaning, but I find there is no reason for saying that the hour was not proper. According to Mr. Bellew himself the water in both No. 2 and No. 3 tracks was more than sufficient for vessels of the draught of the Drachenfels. The tugs were working their engines; it is not necessary to consider at what speed they were working them. The Drachenfels as arranged was not working her engines.

52. It appears that after the Gabtollah Channel was entered, a British Indian steamer coming the other way passed the flotilla and very shortly thereafter the Drachenfels struck. At that time the tide was running very strong and almost right across the channel in a north-easterly direction. Mr. Cox says the accident was due to his striking on a lump. A battle has raged round this question of the lump also. Captain Waller says he did not find a lump where it is suggested the Drachenfels must have struck. After striking on the lump or sand or grounding somewhere, the steamer according to all the witnesses went over the sands and took up a position some 1,200 feet to the east of the eastern edge of the channel. To my mind whether the vessel struck on a lump or was drifted away, as is suggested by Mr. Bellew, by the action of the tide and in the endeavour to avoid the British India steamer, out of the exact track she ought to have kept, is unimportant. The question is whether the masters of the tug were in any degree

responsible for the mishap that took place either as to the time of starting or the navigation of the channel or otherwise. It is in evidence that the time of starting is absolutely at the discretion of the pilot. It is suggested that the accident would not have occurred, if the pilot had altered his helm in sufficient time. I do not wish to say anything that would imply any error of judgment on the part of Mr. Cox but, assuming that he did not in sufficient time alter his helm, is there anything to suggest that the captains of the tugs were in any way to blame or that they abstained from bringing anything to the notice of the pilot, which they should have brought to his notice. The lead was going the whole time and, if I read the evidence aright, there was no deficiency of water found. It is contended that the tug masters ought to have kept in view the leading marks and the buoys, and to have seen that the pilot was keeping in No. 3 track. It is proved beyond a shadow of doubt that is no part of their duty. They had their own work to attend to and to obey the orders of the pilot. If from any miscarriage of his orders any mishap had arisen, they would have been justly responsible. Mr. Bellow does not say it was their duty to keep on the look out and to guide Mr. Cox in the navigation of the vessel. Admittedly it would be impossible to give the charge of this flotilla to three different persons. Mr. Bellow admits that Mr. Cox, from what he knows of the man, must have been alive to the whole situation, and that he cannot suggest that any useful purpose would have been answered by his saying what he, after some pressure in cross-examination, stated he would have said to the pilot in spite of the rebuff which he would have anticipated.

53. Taking all the circumstances into consideration I find that nothing is brought home to the masters of the tugs to suggest that they left undone anything they were bound to do or did anything which they ought not to have done, which led to this result. It is not even shown that the course which was being pursued was not the right course. Various hypothetical suggestions are made that, if they had kept this and that in view they would have known, which way the flotilla was going, but nothing of any tangible character has been proved to justify my holding that there has been any negligence or misconduct on the part of the masters of the Retriever or the Hughli. After the vessel grounded and took the first roll she appears to have righted herself--even Captain Kennewig admits this--and after one or two other rolls she grounded fast. At this stage we have an independent witness on the

scene. I refer to Captain Waller. He was at Kedgeree on his boat the Tigris. Kedgeree is about 38 nautical miles south of Calcutta. He came down towards the Drachenfels and saw her position. He describes how she was fixed there. He saw both the tugs not far off from her. The Hughli and the Retriever say that after the first roll most of the fastenings gave way, that there was apprehension of serious risk to both of them, so they severed the connection and cleared off, and that, after clearing the wreckage, they came back to the assistance of the Drachenfels. There was no abandonment of any kind on their part up to that stage. The Hughli says that her being on the port side of the Drachenfels to some extent contributed to her not capsizing at the first roll. Whether she did or did not is a matter of little moment in the decision of the case, though that also has formed a matter of long examination.

54. I myself am inclined to think from the expert evidence on behalf of the promovents that the Hughli must have contributed to some extent in keeping the Drachenfels from capsizing, but whether she did so or not is, to my mind, of small importance. Captain Waller saw both these vessels close to the Drachenfels. He saw the Hughli attempting to pass her hawser to the German ship and fail. As regards the Retriever's attempts to pass a hawser there can be no doubt and it is not disputed that she did try to do so; but the coming back of the Hughli to the Drachenfels and her endeavours to pass a hawser has been denied by Captain Kennewig and his witnesses. That the Hughli did come back and did attempt to pass the hawser has been conclusively established and I must say I was astonished to see that so much time was taken up in the cross-examination of Captain Best on that point. I utterly disbelieve Captain Kennewig's denial.

55. The attempt of the Retriever was made first and Captain Arden says that it failed entirely, because no one on the Drachenfels was prepared to put out a line to take the hawser in. He is corroborated by Mr. Cox. On the other side is the evidence of Captain Kennewig alone. I am inclined to think, accepting the view suggested by counsel for the Drachenfels, that the denial of Captain Kennewig regarding the Hughli's attempt was due to inattention. But it shows that the accident had wholly demoralised the men on the Drachenfels, and that they were not ready to do anything to help themselves and were not ready to take in the

hawser brought to them by the Retriever. This attempt therefore failed, Just at the time when Captain Arden was taking in his hawser, the Hughli came up and appears to have anchored between the Drachenfels and the Retriever and then shifted her position again to a more appropriate place as described by Captains Waller and Best and Mr. Cox; she then sent out a boat with a hawser for the purpose of passing it to the Drachenfels. Captain Best describes the circumstances connected with it in his evidence. I will refer first to Captain Waller's deposition on this point. At page 17 he says: 'I could not tell how far the Hughli was from the Drachenfels when I first saw them. The two tugs were moving, when I first saw them, I thought they were maneuvering to get to her. When I saw her aground I thought the tugs were going to her assistance. There was a heavy rain squall and I could not see. I first saw the Drachenfels and the tugs after the rain squall. After I got up I was able to judge how far the tugs were from the Drachenfels. When I got up to the Drachenfels the Hughli was, I should say, 700 to 800 feet from the Drachenfels. I saw the Hughli go up to the Drachenfels and drop her anchor. Before that I could not see what she was doing. After that I saw she was trying to pass her hawser to the Drachenfels. There was a tow boat there, and I could see she was trying to get her hawser across. I was watching the maneuver. I was 300 or 400 feet from the Hughli on the other side. I saw the boat, having a cross tide, could not fetch the ship with the amount of line she had out. The cross tide was setting her about N.N.E. It was away from the Drachenfels. They were paying out the hawser on board. The tide caught the hawser and drove it under the Hughli and it caught the propeller.'

56. Captain Best and Mr. Durham describe what happened so far as they saw. Captain Arden also speaks to the incident. Just then there was some movement on board the Hughli which led to the fouling of the starboard propeller. Captain Best in his evidence says at page 17: 'We slacked away the line and the boat rowed towards the steamer, towards the Drachenfels and got very near the Drachenfels, until the line was all out. Then we paid the wire hawser out, attached to the tow line to which the small wire was attached as well. They did not fetch the ship. They might have thrown a rope to the boat from the ship, but they were not paying much attention. Anyhow they did not do it.'

Q.--Then what happened

A.--' After that the wire got foul of the starboard propeller of the Hughli.'

Q.--What caused that?

A.--The wire being so heavy it went right down. The boat could not take the wire out. The coils of the wire from the coils on deck would not open out straight, there being no strain on it, and the wire being heavy sank and fouled the propeller.'

57. Mr. Durham in his evidence says that he was attending to the paying out of the hawser and that it was some movement by the tug which led to the mishap. In answer to the Court in answer to the question 'Having regard to the position of the tug to the Drachenfels, would that be the right position to let out the line?' He said: 'In my judgment that was the right position.' If the starboard propeller was going astern there would be risk; knowing the starboard propeller was not going at that time there was no risk or danger.'

58. Captain Waller in answer to the following question. 'When you saw the boat taking the hawser across to the Drachenfels was there anything you saw that it did in connection with the hawser that was wrong?' he said, 'No,' and then he went on to add that the only possible way of conveying the hawser from the Hughli to the Drachenfels was by a tow boat and that the fouling of the propeller was the fault of no one and he puts it down to the strength of the current. Mr. Cox says it was not a necessary consequence of the maneuvering that took place that the hawsar fouled the propeller. After the propeller was fouled, Captain Waller and the others say it was impossible for the Hughli to render any assistance and so she came up to Calcutta.

59. The contention on the other side is that the fouling of the propeller was the fault of the Hughli.

60. Upon a careful consideration of the evidence I have come to the conclusion that the view expressed by Captain Waller is correct; that it was the fault of no one but a pare accident owing to the action of the tide taken perhaps with the maneuvering for the purpose which Captain Best mentions.

61. Then it is in evidence that after the Retriever had left the place in order to haul in her hawser the Drachenfels put up a signal asking her not to abandon her. This signal was hoisted after she was on the sands and when the captain saw the tugs going away.

62. The position of the Drachenfels at that time, according to Captain Waller and all the witnesses--both those present and the experts--seems to have been one of considerable danger. Captain Waller says he boarded the Drachenfels at 1-40; she had a heavy list then to starboard. He could not state the extent of the list, but she kept going over as the tide fell. His vessel was hanging by the Drachenfels. She was 400 or 500 yards off. Mr. Cox being asked if there was any danger to the Drachenfels being hard and fast, says: 'Yes in danger of breaking her back.'

63. Asked as to the position of the Drachenfels in the afternoon he said: 'The list was gradually getting more and more with the ebbtide. The sand was gradually working away from her starboard side and giving her a bigger list;' and then he describes the various steps taken to get away from the ship. 'The sickmen were taken on board the Retriever. As the list went on increasing, it was deemed advisable to remove the men. One sick man went in the boat with me, when I went to the Retriever.'

64. Mr. Bellew stated that there was no danger of capsizing though there might be other dangers; but, if his evidence is carefully analyzed, it will be seen that he also, like Captain Lardner, was forced to admit that the Drachenfels was in a position of great peril at that place, so much so that Captain Waller, a witness wholly unconnected with the case, says he advised both the captain and the pilot of the Drachenfels to leave the vessel, and that the captain of the Drachenfels did as a matter of fact send over two sick men he had on board--one to the Tigris and the other to the Retriever--and a great portion of his belongings; and although Captain Kennewig suggests the lascars and the crew left without his express sanction, I have no doubt on the evidence that is not true. That they were allowed to go by him in consequence of the danger to which the ship was exposed is perfectly clear.

65. Mr. Cox details conversations with Captain Waller and Captain Arden as to the attempts to float the ship at night and he says they all came to the conclusion it would be most dangerous to make any such endeavour. Captain Arden details a conversation with Mr. Cox regarding the showing of a blue light on the Drachenfels which he would take as a signal to him that all the men on board the ship had left and that, on seeing that light if the ship capsized, he would not make any attempt to save the crew from drowning. Mr. Cox corroborates that statement. Captain Kennewig denies it, and says he was not told about any such arrangement. He admits, however, he did as a fact go over with all his European crew to the Tigris, but says, later in the evening he returned to his vessel with some of his men and that when the water rose he made an attempt to float the vessel and he showed a blue light and whistled to induce the pilot, who was on the Tigris, to return to the Drachenfels. He denies various other circumstances deposed to by Captain Arden, Mr. Cox and Captain Waller. It is material now to consider what Captain Waller says at page 6 (evidence taken on commission).

66' At the time the captain was leaving with these 5 or 6 men both the pilot and I advised him not to go on board. We told him why, for fear of the vessel capsizing. That was why he took the anchor to anchor the boat close to the ship. He took the light, the anchor and the awning, because he wanted to keep a watch on the ship. He said he wanted to keep close to his the ship. He said he was going to anchor near her to see that no one would take the ship, that is to see that no one would go on board and claim her. In my opinion there was no chance of getting the ship off that night.... I Said you can't do anything with her to-night. The pilot said the same thing. He 'said he could not do anything that night. The captain did not say anything to the effect that he hoped to get her off that night or that there was any likelihood of getting her off that night. I did not hear the captain ask the pilot to go along with him. The crew of the Drachenfels remained on board my vessel the whole of that night. The ship's boats were lying astern of me all night with the exception of the one boat the captain went away in. I saw a blue light that night between 12 and 1 o'clock. It was burning on board the Drachenfels.' Asked his reason for thinking that they could not get the Drachenfels off that night he said: 'It was dirty weather; she could not have got off without the tug and the tug, if she had come that night, would most likely have got aground herself. It was a dark

night, very dark and rainy with occasional squalls.'

66. I need not refer to Captain Arden's evidence. They all swear it would have been most dangerous to have attempted to float the ship that night, and beyond that Captain Arden and Mr. Cox both say there is a Government rule against anything of that sort being done at night. Mr. Bellew admits the existence of this rule, but he says in spite of it he would have made the attempt on the ground that necessity overrides all rule³. Putting aside the evidence of the other pilots--men of as great experience as Mr. Bellew--that it would not have been safe, I have the testimony of Captain Waller who was on the spot, who knows the place and the kind of weather and the difficulties of the situation and who says that it would not only have been difficult, but dangerous to attempt it that night. I think I ought to accept the story of the arrangement to which Captain Arden and Mr. Cox have deposed regarding the showing of a blue light.

67. Whether any attempt was made by Captain Kennewig on that night to float his ship or not, I am satisfied on the evidence of Captain Waller, Mr. Cox and Captain Arden that there was no change in her position the next morning. There is no reason suggested why I should disbelieve Captain Waller when he says he found her next morning in exactly the same place.

68. Mr. Cox says that next morning at his suggestion Captain Kennewig signalled to the Retriever to come within hailing distance which she did, and that, after considerable maneuvering, she got into a proper position, passed the hawser and pulled the steamer off. Captain Kennewig says: In my opinion, if the Drachenfels had not worked her engines in the way she did, she would not have got off on that occasion.' In other words his case is that very little assistance was rendered by the Retriever. On the other hand I have the evidence of Captain Waller and Captain Arden who say that the Drachenfels could not have got away from that place without the help of the Retriever. He says, 'She would have broken her back or capsized'. Captain Waller goes further. Asked 'In your opinion was the Retriever's position on the sand, when she got into position for towing, a position of danger?' He answered She was putting herself very close to the sand. I think she was running a danger, running a risk, her stern getting aground. The consequences

might have been that she might have lost her rudder or her propeller. Yes the Retriever succeeded in passing a hawser to the Drachenfels on this occasion and commenced towing. I don't remember at what time she commenced twinge. The Drachenfels was nearly upright when the Retriever began towing. I could not say at what angle; she was nearly upright. She had a slight list to starboard still. I was then about 1,000 feet away from her at that time She never changed her position at all from the early morning. She never moved until the tug pulled her.' Asked, 'In your opinion was the position of the Drachenfels on the 21st a position of peril and danger?' He says 'Yes.' Asked' In your opinion could she have come into the channel without the assistance of the Retriever?' He answered 'No, never. It was impossible.' He was cross-examined at considerable length, but he adhered to his opinion. The same view is expressed by the other witnesses for the promovents. Mr. Bellew suggests she could have remained there, until the spring tides set in again, by which time cargo boats would have been sent down and the ship could have been lightened. His cross-examination shows the danger to which cargo boats, if forthcoming, would have been exposed. I have, however, very little hesitation in holding upon the evidence, I have referred to, that the Drachenfels, would before the next spring tides have broken her back, capsized, or, as Captain Lardner says, gone deeper into the sand.

69. The next question which I have to consider is whether the 'Retriever in performing her work exposed herself to danger and whether it was performed with skill under difficulties.

70. Captain Waller describes the difficulties to which the Retriever was exposed, and he mentions the dangers to which she subjected herself.

71. Mr. Paine (who was not present, but was called as an expert) corroborates him. I need not refer to the evidence of Mr. Cox and Captain Arden.

72. Regarding the skill required for the work, Captain Waller says it was the best bit of towing he had ever seen. Mr. Kirkman, a witness of considerable experience, says the same thing. Mr. Paine says in cross-examination that he does not think the Drachenfels rendered any material assistance to the Retriever in pulling her off, and that in his opinion the tug could have got the Drachenfels off without any

assistance from her as the Retriever had reserve speed.

74. Having regard to all these circumstances I hold that the work performed by the Hughli was of the nature of salvage and that she is entitled to salvage reward for the services she rendered and that the services rendered by the Retriever on the 21st were of a meritorious character.

75. The only question that remains for me to consider is what would be a proper award to make in the two cases.

76. The Hughli asks for 15,000 and in her demand she includes 100 for towage on the 20th.

77. This towage was undoubtedly not ordinary towage. All the witnesses describe it as of a dangerous character and there can be no question that it was of an extraordinary character, but it is unnecessary to go into this further, for I think it would be convenient to assess the reward generally so as to include the services rendered on the 20th as well as the compensation for the damages suffered.

78. To refer the question of damages to the Registrar would be only putting the parties to unnecessary expense. I think, giving the case my best consideration, that Rs. 20,000 to the Hughli to cover everything would be the most appropriate award. As regards the Retriever she has already obtained various sums for towage services and the damages done to her. I think a sum of Rs. 30,000 would be the most appropriate sum for her.

79. The work occupied only a short time, but shortness of service has often been taken as showing extraordinary skill and labour.

80. I assess the remuneration on the value of the ship Drachenfels, its cargo and freight which has been agreed to pay the parties to come to Rs. 7,28,000.. I also keep in view the respective value of the Hughli and the Retriever.

81. I have been addressed on the question of costs by counsel for the Hughli and the Retriever on the one side and Mr. O'Kinealy on the other. The. plaintiff's counsel applied that I should give costs under the schedule relating to Vice-

Admiralty actions, but it is clear upon the practice of this Court since the case of the *Dacca*, (unreported) decided by Phear, J., in 1875 and which has been consistently followed in all subsequent Admiralty actions that costs will be given on the ordinary scale provided for in the rules in accordance with the Civil Procedure Code. Sale, J., in the *Falls of Ettrick* (1894) I.L.R., 22 Cal., 511, gave costs on the ordinary scale and I propose to follow the same course.

82. The plaintiff's counsel contend they are entitled to separate costs Mr. O'Kinealy contends they are not so entitled especially in view of the consolidation order of the 15th of October 1898. I have carefully considered the order made by the learned Judge on the application of the *Drachenfels* for the consolidation of these two matters, and I am of opinion that order was made, as it was asked for, with the object of avoiding a double set of costs to the impugnants. It was never intended so far as I can gather from the words of the learned Judge, and his remarks to Mr. On, that the conduct of the two actions should be given to one set of promovents. In the order of the 15th of October as well as of the 17th of May, both promovents are allowed to cross examine the witnesses separately, and having regard to the course which the two actions have taken, both in the examination of the witnesses before the Commissioner as well as in Court, it would be hardly justifiable on my part to give only one set of costs. Mr. Best was cross-examined by the impugnants, as I pointed out before, at extraordinary length. I am forced to make this comment not satisfied with one answer, counsel returned to the charge over and over again.

83. The impugnants raised every possible objection against the claim of the plaintiff, the result of which has been an inordinate prolongation of the bearing.

84. I think this is a case in which I am bound to give separate costs, and I do so.

85. The learned Counsel for the impugnants said that the claims of the promovents were exorbitant. In one case Rs. 84,000 were asked for, and in the other over a lakh and as the Court has now awarded in the case of the *Hughli* one-fourth of that claim, and in the case of the *Retriever* one-third, I ought to follow the precedent as laid down in the case of the *Champion* (1889) I.L.R., 17 Cal., 84, in which the Appellate Court directed that all costs incurred by the impugnants for

giving security should be deducted from the costs, and I am informed that in this case the Chartered Bank gave the Bond.

86. On one side it is contended that the plaintiff's would not accept the security offered by Graham & Co. That is denied. I am not in a position to judge which statement is correct. Had the position been exactly similar I might have been induced to follow the case of the *Champion* (1889) I.L.R., 17 Cal., 84, but in the present case I find there was no tender of any kind. I find also that Captain Kennewig denies every circumstance connected with the plaintiffs claims and I have found that in every particular he has been, to put it mildly, telling untruths.

87. No doubt the plaintiffs have appraised their services at a higher figure than I have, but it does not follow from this that their claims are exorbitant. Keeping in view the deliberate and obstructive conduct of the captain of the *Drachenfels*. I think it would be only fair to give the plaintiffs the costs which have always been awarded in these Admiralty cases, that is on scale 2. I may mention that in the *Falls of Ettrick* (1894) I.L.R., 22 Cal., 511, the claim of the *Chusan* was 40 per cent, and *Sale, J.*, only gave 10 per cent, and costs followed. He also gave the *Warren Hastings* much less than she asked for. He allowed her costs of hearing and other costs which had been incurred by her separately.

88. The plaintiff's counsel urge that, considering the length of the trial and the number of experts called on account of the objections raised by the *Drachenfels* as to the risks she incurred and other questions which she raised, the Court ought to give special directions. I appreciate that argument and think it would only be right to give the directions in the terms of the rule.

89. I hold that the fees ordinarily allowed under Rules 10, 14, 16 will not be sufficient to indemnify the plaintiffs against the costs incurred by them, and I accordingly direct that the Taxing Officer should exercise his discretion in allowing the costs under these heads on the special scale. I also leave it to him to say what amount should be paid to the expert witnesses, as I have nothing before me on which I can decide this question.

90. The plaintiffs are entitled to reserved costs including the costs of the commission, except as to the adjournment of the 27th July. The Hughli is to pay the costs of the Retriever of and incidental to that application for adjournment.

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