

be good for a combination of which the element mentioned was a feature.

W. Cassels, K.C., and W. D. Hogg, K.C. for plaintiffs.
Lynch-Staunton, K.C., and Masten, for defendant.

Burbidge, J.]

[Oct. 25, 1905.

THE ACTIESELSKABET BORGESTAD V. THE THRIFT.

Shipping—Collision—Interlocutory application for consolidation of two actions—Appeal from local judge.

An action for damages against the defendant ship for collision was taken in the Nova Scotia Admiralty District by the owner of the injured ship on the 15th of September, 1905. The following day a similar action was taken by the charterer and owner of the cargo of such injured ship. On the 28th of September an application was made by the defendant to the local judge for an order to consolidate the two actions, or in the alternative for an order that the defendant ship be released upon tendering bail to the amount of her appraised value, and that a commission of appraisement be issued, to ascertain her value in her then condition. On the 3rd of October the local judge made an order that a commission of appraisement issue, and that upon bail being given for the amount of such appraised value in each of the actions, the ship be discharged from arrest, and that the two actions be tried together. An appeal from such order was taken to the Exchequer Court. Upon the appeal no objection was taken to the order, so far as it directed an appraisement or to the direction that the two actions be tried together except so far as that direction might be held to affect the question of the amount of bail to be given—it only being necessary to give bail to the amount of her appraised value to secure the release of the ship if the actions were consolidated. It was however urged that the local judge should have ordered the consolidation of the two actions, and that the ship should be released in respect of both upon giving bail to the amount of her appraised value.

Held, 1. It was a matter within the discretion of the local judge to grant or refuse an order for consolidation, and as such, ought not to be interfered with on appeal.

2. The order should be varied to allow in the alternative the ship to be released in respect of both actions and claims