
(1872) 02 CAL CK 0003

Calcutta High Court

Case No: None

W. Moran and Others

APPELLANT

Vs

Dewan Ali Sirang

RESPONDENT

Date of Decision: Feb. 7, 1872

Judgement

Sir Richard Couch, Kt., C.J.

The case states that the present defendant having obtained a decree against Poulson, in execution of that decree caused the Steamer Reliance to be attached under a writ of the Small Cause Court as the property of Poulson. It then states "that the present plaintiffs alleging that they were in possession of the steamer under a mortgage from Poulson, in order to obtain the release of the steamer, paid the amount of the decree against Poulson into Court, whereupon the steamer was given up." I think they might very well do this; and the present defendant was not prejudiced by that proceeding. Instead of the steamer being kept in the custody of the officer of the Court pending the determination of the question whether it could be seized as the property of Poulson, the amount for which execution issued was paid into Court, and the execution-creditor got all he could have obtained under his attachment; and we must regard the money which was paid into Court as representing the steamer which had been attached, and as what ought to have been dealt with by the Court, instead of the steamer. The money having been brought into Court in this manner and the present plaintiffs having obtained an order that it should be kept there until the question which was at issue between the parties had been decided, this suit was instituted. In their plaint, as appears from the statement in the case, the plaintiffs did not, and wisely did not, bind themselves to any particular cause of action, but they set forth the facts, and said that they sued the defendant to recover the sum which was paid by them under protest to the bailiff of the Small Cause Court on behalf and to the use of the defendant, and which was deposited in Court by the bailiff on behalf and to the use of the defendant. I think that the learned Judge of the Small Cause Court was not right in considering that, unless he could see that the money had been received by the defendant so as to make it money had and received by the defendant, there was no cause of action. The way the learned Judge ought to have considered it was this, that the

money being in Court at the time, and the real question being which party was entitled to it, he should have determined whether the claim had been proved or not. If he found that it was proved, he ought to have declared that the plaintiffs were entitled to the money, without holding that the money had been received by the defendant which the plaintiffs did not allege; and if he had ordered the money which was then in Court to be paid over to the plaintiffs, he would, without raising any technical question, have done real justice between the parties. It may be that the procedure adopted by the plaintiffs is not quite correct, and that it is an informal kind of inter-pleader which is not authorized by the Act, but it arises out of the circumstances that, instead of the claim having been preferred to the steamer, the money is substituted and paid into Court. I see no reason why that should not be allowed, the defendant not having been prejudiced in any way. We make an order that the money be paid out to the plaintiffs, and that the defendant do pay the plaintiffs the costs of reserving the question, and stating the same for the opinion of this Court, to be taxed according to the scale which is usually allowed in references from the Small Cause Court.