

(1875) 03 CAL CK 0002

Calcutta High Court

Case No: None

The River Steam
Navigation Company

APPELLANT

Vs

W. Moran and Others

RESPONDENT

Date of Decision: March 3, 1875

Final Decision: Dismissed

Judgement

Macpherson, C.J.

This appeal has been very ably argued by Mr. Jackson, who has put his clients' case very forcibly before us. Nevertheless, I am of opinion that the injunction granted is right and ought to be maintained so far as we are now concerned, except in one matter which I shall presently mention. It seems enough for me to say that the learned Judge was right in the conclusion he arrived at; and that, upon these affidavits, I consider it is made out that the ship was docked and taken to pieces in the belief and with the intention, on the part of the representatives both of the plaintiffs and of the defendants, that a fresh arrangement would be come to for her remaining in the dock, subsequent to the 15th of February, for the time necessary to complete her repairs.

2. The ship being in dock under such circumstances, and bearing in mind the peculiar position of the vessel and the peculiar character of the defendants' property, that is to say, its being a dock used as it has been used lately--I think with reference to those circumstances which are very special, that there is an equity which entitles the respondents to be kept in quiet and undisturbed possession until they complete the repairs of the ship, upon the terms which have been imposed upon them by Markby, J. These terms are not such as they have been described by Mr. Jackson to be. They are stringent and substantial, because they provide for the payment not only of rent at Rs. 500 a month, but of any damages which the appellants can show themselves to have sustained by reason of their not being restored to possession on the 15th of February.

3. I have some doubts as to how far the Court ought to have absolutely restrained the defendants from bringing their suit in the Hooghly Court; but none as to their being

restrained from executing any decree until the plaintiffs shall have had a reasonable time within which to complete the repairs of the Nepal and remove her.

4. Therefore, I think the order should be modified so far as to allow the defendants to bring a suit for possession in the Hooghly Court, but they must still be restrained from executing before the 15th of May any decree or order which they may obtain.

5. Mr. Woodroffe, on behalf of the plaintiffs, offers to give the defendants an immediate decree for possession in the Hooghly Court upon a plaint being filed, the defendants being restrained by our order from executing such decree and from ejecting the plaintiffs from, or interfering with the plaintiffs' possession of, the dock, or interfering with the plaintiffs' ship, until the 15th of May. Upon these terms the defendants may bring and proceed with such suit for possession in the Hooghly Court as they may be advised. Subject to this modification the appeal is dismissed with costs.