

(1877) 05 CAL CK 0004

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Charu Nayiah

RESPONDENT

Date of Decision: May 4, 1877

Citation: (1877) ILR (Cal) 355

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

We agree with the Sessions Judge in thinking that the prisoner was wrongly committed. It was proved that the prisoner fished in a public river at a place where the prosecutor had the exclusive right of fishery. The Deputy Magistrate held that this constituted criminal trespass; but we do not think so. The law provides that whosoever enters into or upon property in the possession of another with a certain intent, is guilty of criminal trespass. But though a fishery is property, we do not think that a man who fishes in a public river enters upon property in the possession of another, though he may have no right to fish there. The river upon which the prisoner entered being a public one was not in the exclusive possession of any one, and a right of fishery is not property of such a nature as that a man who unlawfully infringes that right can be said to enter upon property in the possession of another within the meaning of the section.