

ORIGINAL CIVIL

Before Mr. Justice West.

HAJI ABDUL ALLA'RAKHI, PLAINTIFF, v. HAJI ABDUL BA'CHA
AND OTHERS, DEFENDANTS.

1881
October 8.

*Charter-party—Agreement for a charter party—Threatened breach of
charter-party—Interim injunction.*

Where a charter-party has been actually completed, the Court will, by injunction, prevent an employment of the ship inconsistent with the terms of the charter-party; but where there is only an agreement for a charter-party, no such injunction will be granted.

SUIT on a charter-party. The plaint stated that the plaintiff had chartered the defendants' steamer *Empress* to sail from Bombay to Jedda upon the terms contained in a charter-party duly executed, and dated 15th August, 1881; that subsequently the plaintiff heard that the defendants were offering the said steamer to other persons on charter; that the plaintiff was ready and willing to carry out his part of the agreement, but that the defendants refused to perform their part thereof; and the plaintiff alleged "that, unless restrained by the order and injunction of this Honourable Court, the defendants will charter the said steamer to other persons (if, indeed, they have not already done so), and will employ the said steamer *Empress* contrary to the terms of their agreement with the plaintiff."

The prayer of the plaint asked for an injunction in the following terms:—

"That the defendants, their agents, and servants be restrained from committing any breach of agreement to charter the said steamer *Empress* as aforesaid, and may be restrained from employing the said steamer contrary to the terms of the said agreement, and from allowing the said steamer to leave the harbour of Bombay in any voyage for any persons, other than the plaintiff, to whom the defendants may have already chartered the said steamer *Empress*."

The plaintiff also claimed Rs. 60,000 as damages for breach of agreement

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On the day before the October vacation commenced,

Inverarity presented the plaint, and moved for an *intèrim* injunction.—The rule against granting injunction to enforce an affirmative agreement does not apply in the case of a charter-party: Kerr on Injunction, p. 423; *De Mattos v. Gibson*⁽¹⁾. The Court can restrain the defendants employing the ship contrary to their agreement with the plaintiff: *Sevin v. Deslandes*⁽²⁾. The defendants wish to break their agreement with the plaintiff, because they have got a better offer for the ship. Counsel also cited *Heriot v. Nicholas*⁽³⁾; *Messageries Impériales v. Baines*⁽⁴⁾; *Hart v. Herwig*⁽⁵⁾.

Lang appeared for the defendants.

Inverarity.—This is an application for an *interim* injunction, and the defendants cannot be heard.

Lang.—The defendants' solicitors have only just now heard of the plaintiff's intention to apply for an *interim* injunction; and, if the injunction is granted, they will suffer a serious loss, as the ship has been chartered, and is now about to sail with pilgrims to Jedda. The defendants have a good defence to the suit. I ask to be heard on their behalf.

WEST, J.—I think, under the circumstances, the defendants' case should be heard.

Lang.—There has been a preliminary agreement, but the charter-party has not been signed. In such a case as the present an injunction cannot issue: Specific Relief Act (I of 1877), secs. 24 and 56.

WEST, J. [after noticing the delay which had taken place in applying for the injunction, said].—As to the merits, the case of *De Mattos v. Gibson*⁽⁶⁾ and the other cases that have followed it in England, go to establish that a complete charter-party will be enforced by means of an injunction against an inconsistent employment of the ship. Mr. *Inverarity* says that the agreement to make a charter-party is equivalent to a charter-party. It cannot be quite equivalent, for in that case the charter-party would be superfluous; and no case has been cited in which it has been held

(1) 4 D. & J. 276, 298.

(4) 11 W. R. 322.

(2) 30 L. J. Ch. 457.

(5) L. R. 8 Ch. 860.

(3) 12 W. R. 844.

(6) 4 D. & J. 276, 298.

equivalent, nor any even in which specific performance of the preliminary agreement has been granted.

It may upon the cases perhaps be thought to be settled that a charter-party of a ship is a contract for breach of which compensation in money does not afford adequate relief ; but the decisions rest on special considerations, and the supposed principle may not admit of the extension I am asked to give to it. *Primá facie*, one would say that any purely mercantile contract was one admitting of compensation in money ; and that being, as I believe, the generally recognized and central principle, I do not feel warranted, without express authority, in carrying what must be regarded as an exception to it further than the actual decisions have gone. I am the more disposed to refuse the application here, because it might have been made three days ago, and is now made quite at the eleventh hour.

I must reject the application for an *interim* injunction, but I grant a *rule nisi* for injunction as prayed.

Attorneys for the plaintiff.—Messrs. *Tyabji and Dáyábhái*.

Attorneys for the defendants.—Messrs. *Prescot and Winter*.

APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Pinhey.

FAKIRAPA, PLAINTIFF, v. PA'NDURANGAPA, DEFENDANT.*

September 13.

Decree—Limitation—Suit on decree the execution of which is barred by limitation—Limitation Act XV of 1877, Schedule II, Article 122—Civil Procedure Code (Act X of 1877), Section 244—Suit in High Court on judgment of Small Cause Court—Practice—Averments in plaint—Evidence necessary in such suits.

A suit will not lie upon a decree the execution of which is barred by the provisions of the Limitation Act.

A suit may be brought in the High Court of Bombay upon a judgment obtained in the Court of Small Causes of Bombay. The execution of the decrees in such suits is rigorously confined to immoveable estate.

The ground of the interference of the High Court in such cases is that, practically, the judgment-creditor could not recover his debt except by process against the immoveable estate of the debtor.

* Small Cause Court Reference, No. 7 of 1881.

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