

# CALCUTTA HIGH COURT

Mungle Chand

Vs

Gopal Ram

(Sale, J.)

06.08.1906

## JUDGMENT

**Sale, J.**

1. I think there is no reasonable doubt as to the course I ought to pursue. The plaintiff undoubtedly instituted the suit in this Court, subsequently to the suit filed by the defendant in Bareilly. On the other hand it is clear that very great hardship will accrue to the plaintiff, if this suit is tried at Bareilly. Practically all the accounts of the parties, the transactions in respect of which took place in Calcutta, would have to be taken in Bareilly. The plaintiff is a Commission agent, his books are here, his witnesses are here and it was intended that the goods sent by the defendant should be dealt with in Calcutta. Under these circumstances there is no doubt that the parties intended, and indeed justice requires, that the matters between them should be the subject-matter of a suit in this Court. The question is whether effect can be given to the requirements of justice by the stay of the suit in the Bareilly Court. I think the powers of this Court to grant temporary injunctions are not confined to the terms of Sections 492 and 493 of the Civil Procedure Code. This court has acted for a long series of years on the view that its powers of control over persons within its jurisdiction, by injunctions operating in personam, are not restricted by the provisions of the Civil Procedure Code, and I think it is too late to ask us to depart from its practice. Therefore I think this Court has power to restrain the defendant from proceeding with the suit at Bareilly, if justice requires the step. The question is whether I should adopt this course.

2. The Bareilly Court will doubtless stay the defendant's suit in the Bareilly Court, when that Court is informed that this Court has restrained the defendant from proceeding with that suit. I am not to assume that the Judge of the Bareilly Court will take any step unfair to the defendant, or compel him to act in any way inconsistent with his duty of obedience to this Court.

3. The result is that the Rule must be made absolute and the costs be costs in the cause.