

(1906) 04 CAL CK 0021
In the Calcutta High Court
In Re: Alexander Gray

Date of Decision : 19-04-1906

Acts Referred:

Citation : (1906) 04 CAL CK 0021

Judgement

Harington, J.—This is a rule granted, calling upon the Respondent to show cause why under the provisions of sec. 30 of the Inventions and Designs Act, 1888, this Court should not declare that an exclusive privilege in respect of the invention of Alexander Gray for "an improved covering for steam pipes, cylinders and other similar structures" registered as No. 301 of 1901 has not been acquired by the said Alexander Gray, under Part I of Act V of 1888 by reason of all or any of the objections following, that is to say,

- (a) The invention was not at the delivery or receipt of the application for leave to file the said specification a new invention within the meaning of Part I of the said Act.
- (b) The said Alexander Gray was not the inventor thereof.
- (c) The said specification does not fulfil the requirements of the said part.
- (d) That the applicant has knowingly included in the said application things which were not new and whereof he was not the inventor.
- (e) That the said application contains wilful mis-statements.

The Respondent showed cause against the rule upon affidavit and on the affidavits instead of discharging the rule the Court directed the issue to be tried "whether the said Alexander Gray has acquired an exclusive privilege in the above invention registered as No. 301 of 1901.

2. The question at present is upon whom the onus of proof lies. In my opinion, the onus is on the Respondent and for this reason. The rule was granted calling upon them to show cause why the exclusive privilege should not be declared not to have been acquired. They show cause upon affidavit but do not succeed in getting the rule discharged and on the affidavits the rule stands and continues to

stand till the Respondent shows It ought to be discharged. He has not yet shown it but an issue has been directed to be tried and if he succeeds on the trial that will enable the Court to do what it was not able to do before on the affidavits Before the Court can discharge the rule, the Respondent must, if I can use the expression, supplement the affidavits by further evidence. I think, therefore, the onus lies upon the Respondent.