

appellants received it without objection, and they would hardly have taken an open trunk. After that, if there was nothing to show that the loss took place on the ship, the delivery at Portland would have been a good delivery. But the facts above referred to established a presumption that it was tampered with on the ship, and the only way of getting over that presumption would be by showing that it was tampered with elsewhere. The only weak point in the case was in the little transmission from the railway station in the morning to the plaintiff's house. The case was, to a certain extent, weak, but the Court had to give a judgment. The Court below had held the weight of evidence to be in favor of Miss Woodward, and the majority of the Court here could not say that that was a bad judgment; therefore, it was their duty to confirm it.

Judgment confirmed.

Abbott, Tail, Witherspoon & Abbott for Appellants.

Davidson & Cushing for Respondent.

SUPERIOR COURT.

Montreal, Sept. 17, 1878.

JOHNSON, J.

MACDONALD v. JOLY et al.

Injunction—Mandamus—New Conclusions.

An injunction issued against parties about to take possession of a railway. The injunction was disregarded, and forcible possession taken of the railway. Held, that the petitioner, at whose instance the injunction was ordered to issue, might be allowed to add to his conclusions a prayer that he be re-instated in possession.

JOHNSON, J. The point now is one of procedure. The petitioner wants to add to his conclusions, and to be allowed to ask that he may be re-instated in his possession, on the ground that since the injunction issued, the defendants have, in violation of its provisional order, taken forcible possession. The only objection urged was that this would be an attempt to get a mandamus as well as an injunction. That can hardly, perhaps, be called an objection; it is an observation, however, of a highly technical character; but if it should turn out that substantially the right demanded ought to be granted, we must not be deterred by mere names from doing what is just and legal in itself.

There are principles as well as names, in procedure, and the Court must be guided by principles, and not frightened by bugbears. This man asked for, and got an injunction. He now says:—"I have submitted myself to the law; but Her Majesty's writ was disregarded, and I want to be allowed to allege this, so that if I can prove it, I can get possession again of what has been taken from me by force." The question now is, not as to the nature and extent of his possession; that will arise hereafter. The only thing now is as to his right to allege this, and to ask—not to get—restitution. It is quite evident that if men cannot be allowed to complain to the Court of their alleged wrongs, the consequence to society would be most disastrous. Take, for instance, the case that this very man puts forward—(whether true or false is not now the question). He says:—"I tried the authority of the law; but it was ineffectual, and was overpowered by force. I must either have the right to repel force by force, or to tell my wrong to the court of justice." Can there be a doubt that law and order ought to prevail, and that this man ought not to be told that he has no right to come here and state his case; but that he is to be left to the savage remedy of force?—for the law can only abridge the natural rights of men by substituting its own power.

It has often been said that the only difference between a mandamus and an injunction is that the one is an order to do a thing, and the other an order not to do it, and it is said that in England the party would probably be told:—"You may take your mandamus if you like, or your injunction, according to the facts you present; but you can't take them both in one and the same case." But we have our own law, and very ancient and well settled law, that has not been abrogated by the Code, or the statutes that gave us summary *requêtes* where the remedy would in England have been by mandamus or by injunction. We have our own *procédure civile*, and by recurring to the highest authority of old Pigeau we may set right several notions that have perhaps gone a little wrong in the present case. Of course, I am not now considering whether what the plaintiff says is true or not, much less whether it can be successfully opposed by the other party. I am only looking at what it is that he says and asks, and he says