

(1869) 01 CAL CK 0001**Calcutta High Court****Case No:** None

The Queen

APPELLANT

Vs

Rassul Nushy and Others

RESPONDENT

Date of Decision: Jan. 25, 1869**Judgement**

E. Jackson, J.

It is clear that the interference of the Magistrate in this case was not asked on the ground that the road was a public road. The application made by the petitioner consists of a hurriedly and carelessly written petition of four lines. It does not state when the pathway was dug up by the defendants. Under such circumstances, I am not prepared to say that the Magistrate was obliged to enquire into the dispute. Section 320 certainly gives the Magistrate a discretion in the matter. There is nothing in the petition to show that there was any dispute at the time the defendants dug up the pathway. The Civil Court is the proper tribunal to settle such disputes; and even the Magistrate's orders would be subject to the decision of a Civil Court. There are cases where a Magistrate should interfere to prevent a breach of the peace, but it does not follow that he must interfere in all cases. In the absence of all details as to when the occurrence complained of took place I think the Magistrate was right in this case in not interfering.

Norman, J.

I entirely concur in these remarks. It appears to me that it was for the complainants to make out a case for the summary interference of the Magistrate u/s 320. They wholly failed to do so.