

(1907) 08 CAL CK 0001**Calcutta High Court****Case No:** Rev. No. 890 of 1907

Balajit Singh

APPELLANT

Vs

Bhoju Ghose and Others

RESPONDENT

Date of Decision: Aug. 21, 1907**Judgement**

1. The dispute in this case concerns water and the word water includes fisheries. The police recommended in their report that a proceeding under sec. 145, C. Cr. P., should be drawn up between the parties; but the Deputy Magistrate thought otherwise and he drew up a proceeding under the directions of the District Magistrate under sec. 107 of the Code. The result has been that the Petitioner, the second party, has been bound down to keep the peace for one year. It is clear from the judgment of the Deputy Magistrate as well as that of the District Magistrate that a dispute in this case is a *bon[♦] fide* one relating to a fishery right and a large number of documents has been put in on either side to prove the rights of the respective parties and the right of possession of each. In the case of *Dole Gobind Chowdhury v. Dhanu Khan* ILR 25 Cal. 559 (1897), which is a case very similar to the present case, the learned Judges directed that the order under sec. 107, C. Cr. P., binding down one of the parties should be set aside and they expressed their opinion that a proceeding under sec. 145, C. Cr. P., was the proper proceeding. Looking to the words used in sec. 107 and in sec. 145, we have no doubt that the proper course for the Magistrate in a case like this was to proceed under sec. 145 of the Code. The words in sec. 145 are mandatory. That section says "whenever a Magistrate of the district.....is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water.....he shall make an order in writing," etc., etc. Sec. 107 contains words which are discretionary; the Magistrate may institute proceedings binding down either of the parties.

2. We are of opinion that this is a case which comes within the rule laid down in the case of *Dole Gobind v. Dhanu Khan* ILR 25 cal. 559 (1897) referred to above. We accordingly make the rule absolute and direct that the order of the Deputy

Magistrate binding down the Petitioner under sec. 107 of the Code be set aside. It would be competent to the Magistrate, if he thinks it necessary, that is to say, if there is still likelihood of a breach of the peace, to draw up a proceeding under sec. 145 of the Code.