

**(1910) 02 CAL CK 0011**

**Calcutta High Court**

**Case No:** None

Dharam Mandal and Another

APPELLANT

Vs

Gossain Das Mondal and  
Another

RESPONDENT

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**Date of Decision:** Feb. 8, 1910

**Citation:** 6 Ind. Cas. 271

**Hon'ble Judges:** Stephen, J; Carnduff, J

**Bench:** Division Bench

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### **Judgement**

1. In this case the Magistrate purports to have made an order u/s 139, Criminal Procedure Code, in respect of an obstruction alleged to have been caused to a certain foot-path. We have granted a rule to show cause why the order should not be set aside on two grounds one of which is that the Magistrate has not decided whether the way is a public or private way. What happened is that on the conditional order having been made the present petitioner appeared, and said that the path was not a public but a private path, and it may be taken that he also asked for the appointment of a jury to consider the propriety of the order.

2. According to the procedure prescribed in the decision in Dulalram Deb v. Baishnab Charan Deb 10 C.W.N. 845 : 4 Cr. L.J. 42, and the cases there quoted, it was the duty of the Magistrate before referring the matter to the jury to decide himself whether or not to the claim of right to the land in question is made, in good faith and whether the pathway is a public one or not, and it is only on deciding that there was no such claim that any matter could have been referred to the jury. Under these circumstances the procedure of the Magistrate on this point is wrong.

3. The Rule must be made absolute and the Magistrate's order set aside

4. The Rule in this case does not apply to the conditional order which consequently remains unaffected.