# Adhore Chandra Dey Vs Ambika Churn Roy

**Court:** Calcutta High Court

**Date of Decision:** May 27, 1902

## Judgement

1. The rule in this case was granted to show cause why an order under sec. 139, sub-sec. (1), C.Cr.P., should not be set aside, on two grounds,

first, that the Deputy Magistrate before taking action in the case had not decided the question whether the claim of the Petitioner to the property in

dispute was a bond fide claim or not; and, secondly, that the verdict of the jury, being based merely upon local inspection, and upon no evidence at

all, was bad in law, and ought to be set aside. As regards the first point, the case is that the Petitioner has erected a but which encroaches upon the

public way. There is no dispute that the road itself is a public road; and that being so, we think it cannot be said that the jurisdiction of the Deputy

Magistrate was ousted by any claim of the Petitioner, however bond fide, to erect the but in the manner in which he did erect it. In the cases of

Luckhee Narain Banerjee v. Ram Kumar Mukherjee ILR 15 Cal. 564 (1888), Queen-Empress v. Bissessur Sahu ILR 17 Cal. 562 (1890) and

Preo Nath Dey v. Goberdhone Malo ILR 25 Cal. 278 (1897) to which we have been referred, the question was whether the road or way alleged

to have been obstructed was, or was not, itself a public road or way. No case has been shown to us in which it was held that where an

encroachment was alleged to have been made on what was admittedly a public way, it was necessary, in order to give jurisdiction to the

Magistrate, that there should be a finding as to the bond fide character of any claim that might be made by the accused person to any particular

piece of ground on which the encroachment was made.

2. As regards the second point, there is the allegation in the affidavit sworn by the Petitioner that the jury took no evidence in the case and based

their verdict on mere local inspection. That allegation remains uncontradicted. The verdict returned by the jury is before us, and it sets forth nothing

except the inspection of the locality. The Deputy Magistrate in showing cause submits, as we understand, that the local inspection was sufficient;

and he also suggests that from the nature of the verdict of the jury they must have taken some evidence. On the latter point, as we have said, the

allegation in the affidavit remains uncontradicted. As regards the legality of the verdict of the jury merely on the inspection of the locality, there is

the case of Kailash Chunder Sen v. Ram Lall Mittra ILR 26 Cal. 869 (1899) as authority against the proposition submitted by the Deputy

Magistrate. Following that authority we must make this rule absolute, and set aside the order made by the Deputy Magistrate under sec. 139, sub-

sec. (1), Cr.P.C. There will be, of course, nothing to prevent the Deputy Magistrate from taking further proceedings, if he should find it necessary

to do so according to law.