

**(1869) 05 CAL CK 0009**

**Calcutta High Court**

**Case No:** None

In Re: Gopal Burnawar

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** May 10, 1869

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### **Judgement**

Norman, J.

Gopal Burnawar obtained an order u/s 318 of the Code of Criminal Procedure, declaring him to be in possession of a wall separating his house from one in the occupation of the tenants of Ghannu Roy. Since that time the house of Ghannu Roy has come into the possession of Sheikh Ganowri, who was no party to the proceeding in 1865, which was against the former tenant. Sheik Ganowri is now interfering with the enjoyment of the wall by Gopal. Gopal has applied to the Magistrate to interfere, and complained before the Magistrate that Sheikh Ganowri had committed an offence u/s 188 of the Indian Penal Code. The Magistrate thinks that there is no necessity for interference, that there is no danger of breach of the peace, and that the parties should be left to settle their disputes in the Civil Court. The Judge sends up the case, suggesting that the Magistrate was bound to proceed u/s 188 of the Indian Penal Code, which enacts that "whoever, knowing that by an order promulgated by a public servant lawfully empowered, &c., he is directed to abstain from a certain act, disobeys such direction, shall, if his disobedience tends to cause annoyance, &c., to any person, be punished with simple imprisonment."

2. He sends up the case u/s 434. We think it clear that the section in question has no application to the present case, and therefore that no interference on our part is called for. Sheikh Ganowri was no party to the order made in 1865, it was not addressed to him, and therefore he cannot be punished criminally for disobedience of it.