

(1910) 01 CAL CK 0029

Calcutta High Court

Case No: None

Nando Lal Neogy

APPELLANT

Vs

Bejoy Chandra Chatterjee,
Overseer Garalia Municipality

RESPONDENT

Date of Decision: Jan. 18, 1910

Acts Referred:

- Bengal Municipal Act, 1932 - Section 217

Citation: 46 Ind. Cas. 518

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

Bench: Division Bench

Judgement

1. In this case a Rule has been granted to show cause why the conviction and sentence passed on the petitioner should not be set aside on the ground that the facts found disclose no ground for holding the passage to be a public road.

2. The petitioner has been convicted u/s 217 of the Bengal Municipal Act of encroaching on a road. The facts of the case are that a road was made over his land to a trenching ground. This was used for some time and kept in repairs by the neighbouring mill. The trenching ground was subsequently closed, and it is not clear that after that the road was used. It was, however, named by the Municipality which called it "Mogra Lane," From these circumstances the Magistrate draws the conclusion that the, petitioner intended the road to be a public one, which, would cause his act in permitting it to be used to be a dedication to the public; We cannot take this view. The road was originally used for a temporary purpose, and we do not see that there is any fact from which we can suppose that the petitioner ever intended it to be used permanently. Consequently there is so evidence that there was ever any dedication on his part. If there was no dedication there is nothing else in the evidence to show that this was a road within the meaning of the section, for it is necessary that the road under the section should include a public right of way.

3. The result is that the Rule is made absolute. The conviction is set aside and any money that has been paid in respect of the fine will be refunded.