

(1921) 01 CAL CK 0015**Calcutta High Court****Case No:** Rev. No. 1070 of 1920

Jamunadas Kijriwala

APPELLANT

Vs

Hanuman Baksh Marwari

RESPONDENT

Date of Decision: Jan. 21, 1921**Judgement**

1. This Rule is concerned with certain proceedings under the provisions of sec. 145, Cr. P. C. The dispute between the parties is as regards a small strip of land measuring more or less 2 cottas 1 chattak. The initial order under the provisions of the first sub-section of sec. 145 was drawn up on the 28th April 1920. On the 22nd June the parties filed before the Court a joint petition in which they represented that in order to an amicable settlement of their dispute they had appointed arbitrators and that by the arbitrators decision as regards the proceedings taken against them they will be bound. The reference made by the parties, it appears, was made to five arbitrators, and on the 16th August 1920 an award signed by four of the five arbitrators was submitted to the Court. Both parties contended that the award was illegal and invalid mainly on the ground that in coming to their decision the four arbitrators had ignored the fifth. There was also a ground, it may be observed, that the award had not dealt with the question of actual possession : In proceedings under sec. 145, Cr. P. C., it has been held in the case of *Banwari Lal v. Hriday I. L. R. 32 Cal. 552 (1905)* that a reference to arbitration is not contemplated. The section directs the Magistrate to receive evidence himself and on a consideration of such evidence to decide the question of actual possession. No doubt if the parties had privately referred the depute to arbitration and the award of the arbitrators had been accepted by both the parties the Magistrate would have had ground for proceeding under sub-sec. 5 of sec. 145, Cr. P. C. But in the present case neither party accept the award and both parties contend that it is an invalid award. Under these circumstances we must make this Rule absolute and direct the Magistrate to take up proceedings afresh at the point reached on the 22nd June last and to proceed to decide the case in due course of law.