
(1877) 07 CAL CK 0006
In the Calcutta High Court

Sahebzada Roy

APPELLANT

Vs

Raj Koomar Singh and Others

RESPONDENT

Date of Decision : 20-07-1877

Acts Referred:

Citation : (1878) ILR (Cal) 20

Hon'ble Judges : Richard Garth, C.J.; Markby, J.; Macpherson, J.; L.S. Jackson, J.; Ainslie, J

Bench : Full Bench

Judgement

Richard Garth, C.J.—As this question has arisen from a conflict of opinion between individual Judges, Reporter's Note--The rule as at reference to a Full Bench, passed in July, 1867, provides for reference to a Full Bench only where on Division Court differs from another Division Court on a point of law : and a Division Court is, by Section 13 of 24 and 25 Vict. C. 104, the Act establishing the High Courts, to consist of two or more Judges. Here the cases in which there was a conflict of opinion were decisions by one Judge sitting alone, it ought, properly speaking, not to have been the subject of reference to a Full Bench. But as the reference has been made, and the question is one of general importance, we have thought it desirable to decide it.

2. We are of opinion that as the obstruction in this case has caused special injury to the plaintiff, the Civil Court was perfectly justified in directing it to be removed.

3. The Criminal Code, no doubt, contains provisions for the removal of obstructions in public thoroughfares by summary proceedings before a Magistrate; but there is nothing in those provisions which shows that the Legislature intended to deprive a private individual of the redress which the law affords him under such circumstances by means of a civil suit.

Markby, J.

4. I. have nothing to add to the judgment which has just been delivered. I only wish to say that, on further consideration, I concur in thinking that I ought not to

have referred this case to the Full Bench.

Garth, C.J.

5. The appeal will be dismissed with costs.