

(1866) 01 CAL CK 0001

Calcutta High Court

Case No: Special Appeal, No. 1317 of 1865

Ramgunga Sen and
Another

APPELLANT

Vs

Bharat Chandra
Mazumdar

RESPONDENT

Date of Decision: Jan. 25, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

It is admitted that the review was applied for on the 6th February 1865, and that the appeal was not filed until the 18th February 1865. The question therefore referred to the Full Bench, viz., whether a review can be admitted by a lower Court after an appeal has been preferred to this Court, does not arise. It is clear that if a review be applied for in proper time and before an appeal has been preferred, the Judge is not prevented from proceeding upon their application for review by the subsequent presentation of appeal, and he has full power and is bound to proceed under the application for review. This is a special appeal from the judgment in review. The first and second grounds are that the Judge had no jurisdiction to try the review as the application was made after the presentation of appeal to this Court. These two grounds are not supported by the facts, and the objections fall to the ground. It is admitted by the pleader for the special appellant that there is nothing in the third and fourth grounds of appeal. The decision of the lower Appellate Court in review is therefore affirmed with costs.