

(1879) 05 CAL CK 0013

Calcutta High Court

Case No: None

In Re: Cheni Bash
Shaha

APPELLANT

Vs

RESPONDENT

Date of Decision: May 19, 1879

Citation: (1880) ILR (Cal) 97

Hon'ble Judges: Mcdonell, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

We think this a very clear case; it must be determined with reference to the 75th article of the Limitation Act of 1877. At the time when the contract was entered into, the Act of 1871 was in force, of which, so far as concerns this case, the provisions were identical with those of the Act now in force.

2. By waiver in this case, we think, is meant a waiver of the condition by which in default in payment of any one instalment the whole amount unpaid became immediately payable. A waiver of that stipulation consists in the receipt of an instalment after due date, instead of insisting on payment in full. That is quite a different thing from an absolute sleeping on his rights. The creditor here has not waived the stipulation, but has simply allowed time to go on.

3. The time, therefore, began to run from the first default.