

(1869) 06 CAL CK 0042

Calcutta High Court

Case No: None

Mohan Chand Kandu

APPELLANT

Vs

Azim Kazi Chowkidar

RESPONDENT

Date of Decision: June 12, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

We are of opinion that the defendant in the original suit having died before the filing of the plaint against him, the Court had no jurisdiction to decide upon the case. Under these circumstances the time during which the suit was being prosecuted bona fide and with due diligence against the dead man, may be deducted in calculating the period of limitation against his representatives. It will be for the Judge to determine whether the plaintiff was suing the deceased bona fide and with due diligence, or whether he was wanting in due care and caution in not ascertaining whether the party against whom he was proceeding was dead. The case of *Rajkishoree Dassee v. Bodunchunder Shaha* 6 W.R. 298, is not applicable to a case like the present.