

(1899) 04 AHC CK 0001
In the Allahabad High Court

Chetan Charan Das and Others

APPELLANT

Vs

Balbhadra Das

RESPONDENT

Date of Decision : 02-04-1899

Acts Referred:

Citation : (1899) ILR (All) 314

Hon'ble Judges : Burkitt, J; Blair, J

Bench : Division Bench

Judgement

Blair and Burkitt JJ

1. The first of the long list of the grounds of appeal in this case which was argued before us was the 11th. It is couched in the following word:--" Because the decree in the suit was illegally passed after the death of the plaintiff without any person being brought on the record as his representative." The facts are, that the trial was concluded, arguments were heard, and the judgment was reserved on the 5th of September 1896. The plaintiff died on the 9th of September 1896. He was then absent in Orissa, and his death was unknown to any of the parties or to the Court. Judgment was delivered, and the decree was passed on the 15th of September 1896. It was argued on behalf of the appellants that the suit abated from the moment of the death of the plaintiff, and that the Court was incompetent to pass a decree, no representative of the deceased having been put on the record. This is a matter which has long been disposed of in England by the application of a large general principle of law *actus curia nemini facit injuriam*. That principle was applied in the leading case of *Cumber v. Wane*, 1 Smith, L.C., 10th Ed., 325. A defendant in error died after the time when the Court took time to consider. It was prayed that the judgment might be entered *nunc pro tunc*; in other words, that the judgment should be dated as of the day when the Court reserved its decision, and to that prayer the Court acceded. Such has been the invariable practice in England; and that practice finds expression in the rules framed under the Judicature Act of 1875, It seems to us that the decision to which we have referred and the subsequent practice of the Courts are

consistent with justice and good sense. Nothing was left to be done by the parties from the moment the judgment was reserved. Any delay which took place was the delay of the Court, and we are not surprised to find that the English practice has been followed by the Courts in this country, notably in the case of Ramacharyav. Anantacharya (1895) ILR 21 Bom. 314. No case to the contrary has been cited before us. A similar view has been taken by the Privy Council in the case of Surendro Keshub Roy v. Doorgasoon-dery Dossee ILR (1892) Cal. 513. We think that that decision amounts to an authority which this Court is bound to follow. We follow it accordingly. Our ruling in this case must be taken to be strictly limited to its facts, namely, that everything to be done by the parties had been done, and nothing remained except the delivery of judgment, which had been reserved by the Court. We, therefore, over-rule this ground of appeal.