

(1913) 01 CAL CK 0034
In the Calcutta High Court

Munshi Misser and Another	Vs	APPELLANT
Bhimrajmam and Others		RESPONDENT

Date of Decision : 14-01-1913

Acts Referred:

Limitation Act, 1963 — Section 26

Citation : 18 Ind. Cas. 824

Hon'ble Judges : Lawrence Jenkins, C.J.; Stephen, J.; Richard Harington, J.; Mookerjee, J.; Holmwood, J.; Asutosh, J

Bench : Full Bench

Judgement

Lawrence Jenkins, C.J.—The fact that the water flows over the surface of the servient tenement without a definite channel for its carriage cannot prevent the acquisition of an easement. We, therefore, think that the case of Bidhoo Bhusan Palit v. Beny Madhub Mazumaar 8 C.W.N. 244 was not correctly decided. We must accordingly remand the case to the lower Appellate Court in order that it may be determined, first, whether a right has been acquired to discharge water into the servient tenement through a drain which ends in a wall standing on the boundary of the defendants' land, and, secondly, whether having regard to the provisions of Section 26 of the Limitation Act, the present suit lies in respect thereof, and to dispose of the case accordingly.

2. The costs in the High Court including the costs of this reference will abide the result.