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**(1914) 02 AHC CK 0017**  
**In the Allahabad High Court**

Secretary of State for India

APPELLANT

Vs

Jwahir Lal

RESPONDENT

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**Date of Decision :** 25-02-1914

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4

**Citation :** 25 Ind. Cas. 48

**Hon'ble Judges :** Henry Richards, C.J.; P.C. Banerji, J

**Bench :** Division Bench

**Final Decision :** Disposed Of

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## Judgement

1. This is an application under Order XXII, Rule 4, of the CPC to bring on the record the legal representatives of the deceased respondent. The application was made after the expiry of the period of limitation prescribed for such an Application. A learned Judge of this Court has referred the application to us for disposal, he being of opinion that under Order XXII, Rule 4, no application can be entertained unless it is filed within the period of limitation allowed by the Limitation Act, that is to say, within six months from the date of the decease of the respondent. We agree with the view taken by our learned colleague. The law seems to have been altered in this respect in the present Code of Civil Procedure. By Section 5 of the Limitation Act, that section can apply only to cases to which, besides the cases mentioned in the section itself, it is made applicable by any other provision of law. The section is not made applicable to an application under Rule 4 of Order XXII. The rule distinctly provides in Sub-rule (3) that where within the time limited by law no application is made under sub Rule (1), the suit shall abate as against the deceased defendant. In the case of an appeal the word "appeal" should be read for "suit" and "respondent" for "defendant." Therefore, as the law now stands, since no application was made under Sub-rule (1) within the time allowed by law, the appeal must abate. The remedy of the person who could not make his application within the time allowed by the law of limitation is that provided by Rule 9 of the Order. He may after the order of abatement has been passed apply to have it set aside on the ground that he was prevented by

any sufficient cause from continuing the suit or appeal, as the case may be, and this rule clearly makes Section 5 of the Limitation Act applicable to it. We are of opinion that the application to bring the heirs of the respondent on the record cannot be entertained, having been made beyond the period of limitation prescribed for such an application. We accordingly reject it with costs.

2. Their Lordships after disposing of the application, proceeded with the appeal:

Banerji, J.

3. As no application was made in this case to bring on the record the legal representatives of the deceased respondent within the six months prescribed by the Limitation Act this appeal has abated. We accordingly declare that the appeal has abated. This order is made without prejudice to any application which the appellant may be advised to make under Order XXII, Rule 9, of the Code.