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(1869) 04 CAL CK 0024

Calcutta High Court

Case No: Special Appeal No. 3010 of 1869

Lala Parsadi Lal

APPELLANT

Vs

Lala Ambika Prasad  
and Others

RESPONDENT

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**Date of Decision:** April 1, 1869

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### Judgement

Glover, J.

The point taken in this special appeal is, that the Courts below ought to have earned out the provisions of section 2 of Act XXIII of 1861, and have fixed a period for issuing the process asked for by the plaintiff. There appears to be no doubt, on referring to the record, that no such time was fixed; but that on a return of the Nazir to the effect that the plaintiff had not deposited the talabana required by the Court, the case was dismissed, on the 28th December 1867, without any further action being taken on the part of the Court. It is contended, on the other side, that the plaintiff ought to be made to suffer for his own laches; that the case was pending for more than four months, during which the plaintiff took no effectual steps to secure the attendance of his witnesses, and that even from the date on which he was directed to deposit talabana, a farther period of twelve days elapsed before the decision was given, during which time he could easily have paid in the money to procure the attendance of the witnesses. It appears to us that we have no other resource but to remand this case; the question involved is a dry point of law; and whether the plaintiff had, or had not, ample opportunities to deposit; talabana, it is quite clear that, under the provisions of the section above quoted, the Court was bound to fix a period within which the talabana was to be deposited. This section, we may remark, repealed the old law, section 22 of Act VIII of 1859, which contained no provisions for the fixing of any time within which to deposit talabana.

2. It is, therefore, clear that the Legislature, in enacting section 2 of Act XXIII of 1861, had in view the particular object of making the Courts fix a time for depositing talabana, and giving to the plaintiffs or defendants as the case might be, an opportunity of knowing within what period they were bound to make that deposit. The case must go back to the Court of first instance, in order to carry out the provisions of the law, and fix a time within

which talabana is to be paid into Court, and if the special appellant pays the talabana within that time, the Court will take the usual measures for securing the attendance of the witnesses, and dispose of the case on their evidence.