

(1868) 02 CAL CK 0006

Calcutta High Court

Case No: None

Hossaini Bibi

APPELLANT

Vs

Peri Khanum

RESPONDENT

Date of Decision: Feb. 26, 1868

Judgement

Markby, J.

I think I ought to refuse this application. I cannot grant it, without leaving the plaintiff at liberty to bring again this identical suit, raising the same issues, which ought not to be done. On the other hand, I consider on the best construction I can put on the section, that that is all from which the plaintiff will be shut out from doing by my refusal to grant this application. Mr. Eglinton then applied simply for leave to withdraw from the suit. [Markby, J.--If you withdraw, I must dismiss the suit with costs.]

2. In Brass v. Tiruvengada Pillai, (1 Madras High Court Reports, 247) it was held, that the Court has not power to award costs, under such circumstances, on judgment having been given. Markby, J--I do not feel bound by the decision in that case. I think I have power to pass judgment against the plaintiff by default, u/s 114. The suit must be dismissed with costs.