

## SMALL CAUSE COURT REFERENCE.

*Before Mr. Justice Jackson and Mr. Justice Tottenham.*

ISAN CHUNDER BANERJEE v. LUCHUN GOPE.  
KEMP v. PREM NARAYAN SING.\*

1880  
*Jan. 29.*

*Review of Judgment—Mufassal Small Cause Courts Act (XI of 1865), s. 21  
—Code of Civil Procedure (Act X of 1877) s. 623 and Chap. xlvii,  
Schd. ii.*

The Judge of a Mufassal Small Cause Court may grant an application for a review of judgment under the Code of Civil Procedure.

IN his letter of reference, the Judge of the Small Cause Court stated that two applications had been made under s. 623 of the Code of Civil Procedure for a review of his judgments. That these applications had been made within the time limited for such applications under the Limitation Act of 1877, but that no preliminary notice required by s. 21 of the Mufassal Small Cause Courts Act (XI of 1865) in the case, when applications for new trials are made, had been given. That a preliminary objection had been taken at the hearing of these applications, on the ground that no review of judgment could either be applied for, or obtained, under the procedure prescribed by the Mufassal Small Cause Court Act. The Court pointed out that, previous to the passing of the Code of Civil Procedure (Act X of 1877), the only mode of obtaining a rehearing of a case tried in a Mufassal Small Cause Court, was by way of new trial under s. 21 of Act XI of 1865; that this section still stood unrepealed, but the legislature had, by the second schedule of the Code of Civil Procedure, extended chap. xlvii of that Act, dealing with review of judgment, to Mufassal Small Cause Courts. The Court was inclined to the opinion that these facts might be construed as disclosing the intention of the legislature to provide a separate concurrent mode for obtaining a rehearing of

\* Small Cause Court References, Nos. 69 and 70 of 1879, from an order of Baboo Amrit Lal Chatterjee, Judge of the Small Cause Court of Dacca, dated the 24th November 1879.

1880  
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a case in the Small Cause Court; on that account, thorofero, an application for a review of judgment might legally be made. The Court made an order to this effect, subject, however, to the opinion and order of the High Court.

Baboo Opendro Nath Mitter, for the petitioner.

The judgment of the Court (JACKSON and TOTTENHAM, JJ.) was delivered by

JACKSON, J.—We think there can be no doubt upon this question. It appears that, by the second schedule of the Code of Civil Procedure, chap. xlvii, which deals with review of judgment, is extended absolutely to Courts of Small Causes constituted under Act XI of 1865. It is also true, as the Judge of the Small Cause Court points out, that s. 21 of Act XI of 1865 has not been repealed. What will be the effect of the simultaneous retention of that section with reference to new trials, is a question which we are not at present called upon to determine. The legislature unequivocally expresses its intention that the procedure in review of judgment shall be applicable to Courts of Small Causes, and if so, the Small Cause Court is of course at liberty to entertain an application of that sort and in so doing must proceed strictly under the rules contained in that chapter, and the procedure relating to new trials under s. 21 of Act XI is not to be mixed up with those rules.

### ORIGINAL CIVIL.

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Pontifex.*

BROJOMOHUN DOSS AND OTHERS (PLAINTIFFS) v. HURROLOLLI DOSS (DEFENDANT).

1880  
 Feby. 10.

*Enforcement of Religious or Charitable Trusts—Security for Costs—Pleading—Parties.*

The representatives of a testator, who has created trusts for religious or charitable purposes, in which the representatives are not personally interested, may institute proceedings to have abuses in the trust rectified, there being no officer in this country who has such power of enforcing the due administra-