

Before Mr. Justice L. S. Jackson and Mr. Justice Glover.

KAILAS.CHANDRA SANNEL AND OTHERS (DEFENDANT) v. DAWLAT SHEIKH AND OTHERS (PLAINTIFFS).\*

1870  
June 8.

Act XI of 1865, s. 21—*Small Cause Court Act (Mofussil)*.

A defendant desiring a new trial of a case decreed against him in a Small Cause Court, must deposit in Court the amount of the decree passed against him and costs, at the time of giving notice of his intention to apply for the new trial. A subsequent deposit, though made within seven days from the date of decision, will not entitle the party to ask for a new trial.

*Semble*—“The next sitting of the Court,” mentioned in section 21, Act XI of 1865, refers to the next sitting after the decision complained of; and the words “within the period of seven days from the date of the decision” apply to cases in which the sittings of the Small Cause Court are not held consecutively by reason of the same Judge being the Judge of more than one Court.

THE following cases were submitted by the Judge of the Small Cause Court of Kishnaghur for the opinion of the High Court:—

“In these cases, which were contested ones, the plaintiffs obtained decrees. The defendants filed “notices” under section 21, Act XI of 1865, on the following day, but unaccompanied with the amounts decreed and costs as required by that section. Within seven days of the original decision, *i. e.*, seven open days (see the case of *Girijabhusan Haldar v. Akhay Nikari* (1),) applications for new trials were filed; and along with these applications, the amounts decreed and costs were deposited in each case. I have refused the

(1) *The 26th January 1870.*

before Mr. Justice L. S. Jackson and  
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GIRIJABHUSAN HALDAR (DEFENDANT) v. AKHAY NIKARI (PLAINTIFF).†

“In this case, which was a contested one, a decree was given on the 6th of November. The 12th and 13th were holidays, the 14th was Sunday, and the 15th, a holiday. Notice of application for a new trial was filed on the 16th, or more than seven days from the date of the decision. The question which I have to submit for the opinion of the High Court is whether, under section 21, Act XI of 1865, the applicant can be allowed to deduct the four days on which the Court was closed in computing the seven days within which, according to that section, notice must be filed.

“I am of opinion that the authorized

\* Reference No. 11 of 1870, from the Judge of the Small Cause Court at Kishnaghur dated the 5th May 1870.

† Reference, No. 20 B, from the Officiating Judge of the Small Cause Court of Kishnaghur, dated the 3rd December 1869.

(2) 3 W. R., C. Ref., 5.

holidays and Sunday cannot be excluded from the computation, at least, judging by analogy from what has been laid down in cases coming under the Limitation Act: *Raj Kristo Roy v. Dinobundoo Surmah* (2).

“A different rule however seems to have been laid down in appeals; and in *Shazada Woolah Gowhar* (3), the Dusserah vacation was held to be “*dies non*” in a case coming under section 377 of the Civil Procedure, which does not however apply to Small Cause Courts.

“In this case the party applying for a new trial might have filed his notice on the 8th, 9th, 10th, or, 11th which were open days, and have been within time according to section 21, Act XI of 1865.”

The opinion of the High Court was delivered by

JACKSON, J.—The question in this case is whether, under the terms of the latter

(3) 6 W. R., 19.