
(1873) 02 CAL CK 0006

Calcutta High Court

Case No: None

Purson Chund Golacha

APPELLANT

Vs

Kajooram and Another

RESPONDENT

Date of Decision: Feb. 28, 1873

Judgement

Sir Richard Couch, Kt. C.J.

1. The question which has been referred to us by the Small Cause Court is (reads). It appears that the Judges of the Small Cause Court had determined to grant a new trial subject to the opinion of this Court; and we may therefore take it that they considered the case was a proper one for a new trial. The language of s. 53 of Act IX of 1850 is certainly sufficiently large to allow a new trial being granted after a previous new trial (reads). It is reasonable and is in accordance with the practice of the Court in England to grant a new trial after a previous new trial, if it seems necessary for the ends of justice. There are instances in England in the common Law Courts and in the Courts of Equity where more than one new trial has been granted, it appearing proper that it should be done. We think the same rule may be applied here. We must assume that the Judges of the Small Cause Court will not exercise this power unless it appears to them to be right to do so, and they have power to impose such terms as they may think reasonable. We think the question which has been referred to us must be answered in the affirmative, that it is competent to the Judges of the Small Cause Court to grant a second new trial in the same case.

2. Each party will pay his own costs of stating the case and taking the opinion of this Court.

¹ Act IX of 1850 s. 53.--"Every order and judgment of any Court hold on under this Act, except as herein provided, shall be final and conclusive between the parties; but the Judges shall have power to non-suit the plaintiff in every case in which satisfactory proof shall not be given to them, entitling either the plaintiff or defendant to the judgment of the Court; and shall also, in every case whatever, have the power, if they shall think at to

order a new trial to be had, upon such terms, as they shall think reasonable, and in the meantime to stay the proceedings."

²Rule 56-----his deposit.

³Rule 58-----him in Court.