

**(1868) 07 CAL CK 0036**

**Calcutta High Court**

**Case No:** Special Appeal No. 3389 of 1867

Nanda Kumar Banerjee

APPELLANT

Vs

Ishan Chandra Banerjee

RESPONDENT

---

**Date of Decision:** July 9, 1868

---

### **Judgement**

Barnes Peacock, Kt., C.J.

The plaint asks for one of two things, either that the defendant may be ordered to fill up the excavation at his expense, or that the plaintiff may have 25 rupees as damages. The latter alternative is one entirely within the jurisdiction of the Small Cause Court. The plaintiff is not, I think, entitled to a decree for performance of the specific act, but only to the alternative relief sought for by him. It is, therefore, a suit for damages, and the Small Cause Court cannot be ousted of its jurisdiction merely by asking for an alternative relief to what the plaintiff is not entitled. In this view the Principal Sudder Ameen was correct in saying that the suit is one which is cognizable by the Small Cause Court. The decision of the Lower Appellate Court is affirmed with costs.